STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☒ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify	☐ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kenneth R. Wentz,

Petitioner,

vs.

NO: 10 WC 01279
14 IWCC 0091

Truck Centers Inc.,

Respondent.

CORRECTED DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of penalties and attorney's fees, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission notes that the Arbitrator denied Petitioner's Petition for Penalties and Attorney's Fees, finding that Respondent's termination of Petitioner's weekly benefits on February 29, 2012, was not unreasonable or vexatious. The Arbitrator noted that Petitioner had admitted at hearing that he had driven to Wyoming "for the sole purpose of alleviating apparent boredom." (Arb.Dec.7,T.36-37) This contradicted Petitioner's earlier testimony that he drives only when necessary. (T.34-35,62) However, the Commission notes that Petitioner's undisputed testimony also shows that Petitioner's job required him to have a CDL license and B license, not just a basic driver's license, in order to perform his job for Respondent. (T.15-16) The Commission finds that Petitioner's ability to pass a basic driver's license vision test for a basic driver's license test in January 2012 does not mean the medical restriction on his driving had been lifted or that Petitioner can or has regained his CDL license. More importantly, the Commission finds that Petitioner's ability to pass a basic vision test for a driver's license does not mean that Petitioner's visual impairment has changed in any way.

As noted by Petitioner in his Statement of Exceptions and Supporting Brief, the "fact that

Petitioner had a valid driver's license does not negate the medical opinions that because of his permanent vision loss Petitioner cannot return to his job as a commercial driver." (Petitioner's Brief,pg.16) The Commission also notes that there are no restrictions on Petitioner's driving his personal vehicle. Based on the above, the Commission finds Respondent's decision to terminate Petitioner's benefits based on Petitioner's getting his driver's license erroneous, but not unreasonable or vexatious. Therefore, the Commission awards penalties pursuant to §19(l) of the Act. As explained by the Illinois Supreme Court in *McMahan v. Industrial Commission*, 182 Ill.2d 499, 515 (1998),

> "The additional compensation authorized by section 19(l) is in the nature of a late fee. The statute applies whenever the employer or its carrier simply fails, neglects, or refuses to make payment or unreasonably delays payment 'without good and just cause.' If the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay, an award of the statutorily specified additional compensation is mandatory."

As explained above, Petitioner's ability to renew his regular driver's license is not, in the Commission's view, a "good and just cause" to terminate Petitioner's weekly benefits since what Petitioner required to work was a CDL license, not the regular driver's license he obtained. Furthermore, as previously noted, Petitioner has not been restricted from driving, even though his doctor has recommended that he not do so. Therefore, the Commission reverses the Arbitrator's denial of Petitioner's Petition for Penalties and Attorney's fees and awards penalties under §19(l) from February 25, 2012 through September 25, 2012, the date of hearing, totaling $6,390.00.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on November 1, 2012, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $206.67 per week for a period of 21-6/7 weeks, from May 14, 2009 through October 27, 2009, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner $461.78 per week for a period of 151-4/7 weeks, commencing October 28, 2009, through September 25, 2012, the date of hearing, and then ongoing for life, as provided in §8(f) of the Act, because he is permanently and totally disabled, and said payment shall continue weekly so long as Petitioner remains permanently and totally disabled.

IT IS FURTHER ORDERED BY THE COMMISSION that commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the ***Rate Adjustment Fund***, as provided in §8(g) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay

reasonable and necessary medical expenses, as provided in §8(a) and §8.2 of the Act. (See Memorandum of Decision of Arbitrator and Petitioner's Exhibit 15 for detailed analysis thereto.)

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner $6,390.00, pursuant to §19(l) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 2 6 2014
DRD/ell
o-01/23/14
68

Daniel R. Donohoo

David L. Gore

Mario Basurto

State of Illinois)
)ss.
County of Madison)

Before the Illinois Workers' Compensation Commission

Kenneth R. Wentz,
Petitioner,

vs.

No. 10WC01279
14IWCC0091

Truck Centers, Inc.,
Respondent.

ORDER

The Commission on its own Motion recalls the Decision and Opinion on Review of the Illinois Worker's Compensation Commission under Section 19(f) of the Act for the above-captioned case dated February 10, 2014.

The Commission is of the opinion that the Commission's Decision and Opinion on Review should be recalled and corrected due to a clerical error. The order regarding the Rate Adjustment fund was omitted and the description box on the decision was incorrectly marked "None of the Above" instead of "Rate Adjustment Fund".

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated February 10, 2014 is hereby recalled and a corrected decision issued simultaneously. The parties should return the February 10, 2014 decisions to Commissioner Michael J. Brennan.

Dated: FEB 2 6 2014

Daniel R. Donohoo

David L. Gore

Mario Basurto

DRD:bjg
0-1/23/2014
052

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Kenneth R. Wentz,

Petitioner,

14IWCC0091

vs.

NO: 10 WC 01279

Truck Centers Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Petitioner herein and notice given to all parties, the Commission, after considering the issues of penalties and attorney's fees, modifies the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission notes that the Arbitrator denied Petitioner's Petition for Penalties and Attorney's Fees, finding that Respondent's termination of Petitioner's weekly benefits on February 29, 2012, was not unreasonable or vexatious. The Arbitrator noted that Petitioner had admitted at hearing that he had driven to Wyoming "for the sole purpose of alleviating apparent boredom." (Arb.Dec.7,T.36-37) This contradicted Petitioner's earlier testimony that he drives only when necessary. (T.34-35,62) However, the Commission notes that Petitioner's undisputed testimony also shows that Petitioner's job required him to have a CDL license and B license, not just a basic driver's license, in order to perform his job for Respondent. (T.15-16) The Commission finds that Petitioner's ability to pass a basic driver's license vision test for a basic driver's license test in January 2012 does not mean the medical restriction on his driving had been lifted or that Petitioner can or has regained his CDL license. More importantly, the Commission finds that Petitioner's ability to pass a basic vision test for a driver's license does not mean that Petitioner's visual impairment has changed in any way.

As noted by Petitioner in his Statement of Exceptions and Supporting Brief, the "fact that

Petitioner had a valid driver's license does not negate the medical opinions that because of his permanent vision loss Petitioner cannot return to his job as a commercial driver." (Petitioner's Brief,pg.16) The Commission also notes that there are no restrictions on Petitioner's driving his personal vehicle. Based on the above, the Commission finds Respondent's decision to terminate Petitioner's benefits based on Petitioner's getting his driver's license erroneous, but not unreasonable or vexatious. Therefore, the Commission awards penalties pursuant to §19(l) of the Act. As explained by the Illinois Supreme Court in *McMahan v. Industrial Commission*, 182 Ill.2d 499, 515 (1998),

> "The additional compensation authorized by section 19(l) is in the nature of a late fee. The statute applies whenever the employer or its carrier simply fails, neglects, or refuses to make payment or unreasonably delays payment 'without good and just cause.' If the payment is late, for whatever reason, and the employer or its carrier cannot show an adequate justification for the delay, an award of the statutorily specified additional compensation is mandatory."

As explained above, Petitioner's ability to renew his regular driver's license is not, in the Commission's view, a "good and just cause" to terminate Petitioner's weekly benefits since what Petitioner required to work was a CDL license, not the regular driver's license he obtained. Furthermore, as previously noted, Petitioner has not been restricted from driving, even though his doctor has recommended that he not do so. Therefore, the Commission reverses the Arbitrator's denial of Petitioner's Petition for Penalties and Attorney's fees and awards penalties under §19(l) from February 25, 2012 through September 25, 2012, the date of hearing, totaling $6,390.00.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed on November 1, 2012, is hereby modified as stated above, and otherwise affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $206.67 per week for a period of 21-6/7 weeks, from May 14, 2009 through October 27, 2009, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner $461.78 per week for a period of 151-4/7 weeks, commencing October 28, 2009, through September 25, 2012, the date of hearing, and then ongoing for life, as provided in §8(f) of the Act, because he is permanently and totally disabled, and said payment shall continue weekly so long as Petitioner remains permanently and totally disabled.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay reasonable and necessary medical expenses, as provided in §8(a) and §8.2 of the Act. (See Memorandum of Decision of Arbitrator and Petitioner's Exhibit 15 for detailed analysis thereto.)

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner

14IWCC0091

$6,390.00, pursuant to §19(l) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 10 2014
DRD/ell
o-01/23/14
68

Daniel R. Donohoo

David L. Gore

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0091

WENTZ, KENNETH R
Employee/Petitioner

Case# **10WC001279**

TRUCK CENTERS INC
Employer/Respondent

On 11/1/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.16% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

4599 SCHUCHAT COOK & WERNER
CLARE R BEHRLE
1221 LOCUST ST 2ND FL
ST LOUIS, MO 63103-2378

2250 LAW OFFICES OF STEPHEN LARSON
RHONDA KATTLEMAN
940 W PORT PLZ SUITE 208
ST LOUIS, MO 63146

14IWCC0091

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

☐ Injured Workers' Benefit Fund (§4(d))
☒ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☐ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

KENNETH R. WENTZ
Employee/Petitioner

v.

TRUCK CENTERS, INC.
Employer/Respondent

Case # 10 WC 1279

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Collinsville**, on **September 25, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance TTD
L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **01/29/09**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$13,000.00**; the average weekly wage was **$250.00**

On the date of accident, Petitioner was **59** years of age, *single* with **0** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$48,514.46** for TTD, maintenance and permanency, for a total credit of **$48,514.46**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act. Respondent agreed to be responsible for causally related medical bills pursuant to the fee schedule. The parties agreed that Section 8(j) rights were not waived by Respondent.

ORDER

Respondent shall pay reasonable and necessary medical services, as provided in Section 8(a) of the Act, and subject to the medical fee schedule, Section 8.2 of the Act. (See Memorandum of Decision of Arbitrator and Petitioner's Exhibit 15 for detailed analysis thereto).

Respondent shall pay Petitioner temporary total disability benefits of $206.67/week for 21 6/7 weeks, commencing May 14, 2009 through October 27, 2009, as provided in Section 8(b) of the Act.

Respondent shall pay Petitioner $461.78 per week, for life, for 151 4/7 weeks, commencing on October 28, 2009, through the date of hearing, September 25, 2012, and ongoing, as provided by Section 8(f) of the Act, because he is permanently and totally disabled, and said payment shall continue weekly so long as Petitioner remains permanently and totally disabled.

Penalties and attorneys' fees pursuant to Sections 19(k) and 16 of the Act are hereby denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

11/01/2012
Date

NOV - 1 2012

14IWCC0091

STATE OF ILLINOIS)
)SS
COUNTY OF MADISON)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

KENNETH R. WENTZ
Employee/Petitioner

v. Case # 10 WC 1279

TRUCK CENTERS, INC.
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

Respondent, Truck Centers, Inc., is a dealership which specializes in the sales of commercial trucks and tractor trailers. Petitioner, Kenneth R. Wentz, was working for Respondent as a casual driver when on January 29, 2009, he was walking across the dealership when a matt he stepped on slipped out from under him because of a wet floor. He fell, injuring his left shoulder. Petitioner began treating with Dr. Markenson, a physician who has treated him in the past for orthopedic problems. Dr. Markenson diagnosed a left rotator cuff tear and recommended surgery.

Prior to his work injury, Petitioner was thought to have a medical condition, a bleeding disorder, called Von Willibrands Disease. Because of a concern with proceeding to surgery with this condition, Dr. Markenson consulted with Dr. Gu at St. Louis Oncology Associates. It was recommended that Petitioner be given a medication, Factor VIII, to try to counter-act any excessive bleeding Petitioner might have from surgery as a result of the Von Willibrands Disease. Factor VIII is designed to provide a clotting agent.

Petitioner continued to work with Respondent until Dr. Markenson performed rotator cuff surgery on Petitioner's left shoulder on May 14, 2009 at St. Anthony's Medical Center. (Petitioner's Exhibit (PX) 6). When Petitioner woke up from surgery he testified he could not see – his vision was lost. He ultimately came to understand that the Factor VIII medication he was given led to a stroke which affected the part of his brain relating to his eyesight. Shortly after the surgery, he had a second stroke. Following the second stroke, his central vision returned but he was left without peripheral vision in both eyes. Following the initial surgery, Petitioner had to make four visits to St. Elizabeth's Hospital on May 27, 2009, May 31, 2009, June 21, 2009 and June 24, 2009. (PX 10).

Petitioner has seen a number of eye doctors in reference to his lost vision. All of them have advised him that his vision loss is permanent and there is no additional medical treatment to bring it back. Dr. Joan Pernoud, Respondent's examining physician, recommended a pair of specialized glasses following his last visit to her. (PX 13). Petitioner did have these glasses made and he feels that they have helped him somewhat, especially with his headache problems. They have not, however, restored his vision. Petitioner admits that all of the doctors have advised him against driving.

Petitioner testified that he does continue to drive on a limited basis. He does so because he lives alone in a very rural area, surrounded by farms, in which there is no public transportation near him. He relies on neighbors and friends to help him with transportation, but when they are not available, he drives himself. He limits his driving and does not drive at night. He testified he drives around the area up to 50 miles only when necessary. An occasion when he drives is when he has to go to the store. He drove a couple of weeks prior to trial to pick up his new prescription glasses in Belleville, Illinois.

Petitioner drove to Wyoming in 2011. The trip took about four days and once he was there he turned around and came back. Petitioner testified that he did this because he was "bored to death." Petitioner testified that he has also occasionally ridden his motor cycle but it has been over a year since he rode it last. He testified that motorcycles have always been a hobby for him. Petitioner testified that he is always very concerned and nervous when he drives because of his lack of peripheral vision.

Following his surgery, Petitioner did not return to his driving job with Respondent. While the company was trying to determine if they had any permanent work to offer him, Petitioner worked in the office for four days filing invoices. Petitioner testified to the difficulties he had doing this work. He suffered from headaches and any reading he did took twice as long. No additional work, either temporary or permanent, was offered to Petitioner by Respondent. Petitioner has not worked for anyone else, nor has he looked for work with anyone else. He does not know what sort of work he can perform since his professional driving career is over. Petitioner no longer has a CDL, or commercial driver's license. and would not be able to pass the physical examination. He needs this to drive commercially. Petitioner has never been offered any transportation assistance by Respondent, nor has he ever been offered vocational assistance.

After Petitioner last worked for Respondent, he began receiving checks on a weekly basis. Initially, Respondent paid Petitioner at the temporary total disability (TTD) rate of $206.67. Starting on October 27, 2010, Respondent began paying Petitioner at the permanent total disability (PTD) rate of $461.78. (RX 1). Ronda Wesemann, Respondent's human resources director who handles workers' compensation matters, was called at trial by Petitioner and testified. After paying through February 24, 2012, Respondent terminated the weekly payments because Respondent learned Petitioner had passed his driver's test. Petitioner testified that he got his driver's license renewed in January 2012. Petitioner testified he had to renew his driver's license because he had to have some form of transportation.

Ms. Wesemann testified that she was aware Petitioner had limited vision following the incident with his surgery, but was not aware of the exact medical diagnosis. She testified that many conversations took place about returning Petitioner to work in some fashion, including driving, but that Respondent's attorney advised against returning Petitioner to work in a driving capacity. Ms. Wesemann testified that she and others with Respondent heard that Petitioner was driving and had a license after it was determined that he could no longer drive for a career, but that they did not hear this from Petitioner himself. She testified that once Respondent's insurance carrier learned Petitioner was indeed driving, his benefits were terminated.

Petitioner has been receiving social security disability benefits (SSDI) since approximately 1991 because of orthopedic problems with his legs. From 1991 until 2003, he did not work at all because of these physical problems. The SSDI benefits he receives is his sole amount of support in addition to a pension in the amount of $64.67 per month from a prior employer. He was receiving SSDI benefits before he began working for Respondent in 2003, and Respondent was aware of this fact. His SSDI benefits were the type that allowed him to work a certain number of hours each month. Petitioner was working with Respondent because he could not financially survive on his SSDI benefits and small pension alone. Since his workers' compensation payments were cut, Petitioner testified he has been under an extreme hardship. He cannot pay for his living expenses, his mortgage, or his taxes, and has had to borrow money from friends and family. He estimates he has borrowed approximately $7,000.00 so far, and he has been told that he has reached his limit in what he can borrow.

Petitioner never graduated high school and does not have a GED. All of his adult work life has been performing jobs such as mechanic and truck driver. He holds no specialized training or special certificates.

Petitioner testified that the shoulder surgery performed by Dr. Markenson was a success and he no longer has problems with pain and function in the shoulder as he did prior to the surgery. He does not believe that his left shoulder is limiting his ability to work; rather it is his vision problems. Petitioner complains of ongoing headaches ever since his stroke, as well as memory problems. It is very difficult for him to read and it takes him longer to read, and the longer it takes can result in headaches. He has to twist his head to the side to see, making it difficult to drive. Petitioner takes medications for his cholesterol levels and his gout, but does not take any pain medication in reference to his shoulder.

On October 27, 2009, Dr. Markenson noted Petitioner was doing quite well with his left shoulder with only some minor problems. On that date, he placed Petitioner at maximum medical improvement (MMI), and discharged Petitioner from his care. In reference to Petitioner's shoulder, Dr. Markenson said he could return to full duty employment. However, in letters to Travelers Insurance, he noted Petitioner's permanent loss of vision due to the stroke and told them that Petitioner will not be able to return to work permanently because of his loss of ability to drive due to the vision loss. (PX 1, letters dated 08/18/2009 and 10/27/2009).

Dr. Marshall Matz, a neurosurgeon, reviewed the case for Respondent and in his August 17, 2009 report opined that the transfusion of Factor VIII increased the coagulability of Petitioner's blood, which would increase the risk of having a vascular occlusion. He suggested the record be reviewed by a hematologist for a further opinion as to whether or not the stroke was related to the use of Factor VIII. He thought that if a hematologist concurred that the vascular occlusion was the result of the Factor VIII treatment then it would not be unreasonable to conclude the episode that led to the necessity for surgery was the incident that caused his neurologic deficit. Dr. Matz thought that if Petitioner still had his ataxia and visual field loss then that was a permanent outcome from his posterior cerebral artery occlusion. (PX 8).

Dr. Michael Ellison, a hematologist, reviewed the file for Respondent and concurred that there was a causal connection between the Factor VIII and postoperative stroke. So while the rotator cuff surgery did not cause the stroke, it did so indirectly by necessitating use of the Factor VIII (Humate-P). (PX 9).

Petitioner was examined by Dr. Michael Jones at Illinois Eye Surgeons on December 8, 2009. Following examination, Dr. Jones noted that Petitioner did not meet the requirements needed to drive. (PX 11). Petitioner was examined by Dr. Gary Vogel, an optometrist, on January 6, 2010. He discussed a prismatic system to try to improve peripheral vision, but stated that in Illinois the prismatic systems cannot be used to obtain a drivers license. Dr.Vogel opined that Petitioner should not drive, even if he could pass the driver's test. (PX 12).

Petitioner was sent to Dr. Pernoud of Pernoud Eye Institute for an examination on March 25, 2010. Following her examination, Dr. Pernoud reported that Petitioner had suffered a stroke during his rotator cuff surgery and the stroke was located in an area which is involved with the visual field and with eye movements. She diagnosed visual effects of stroke, "including significant side vision loss and extraocular muscle function restriction." She thought that Petitioner was not capable of driving or passing an Illinois drivers examination because of his severe visual field loss. In her opinion, Petitioner would only be capable of limited desk work. She reported that Petitioner's visual field was restricted so severely that "any work requiring movement will be very difficult and potentially dangerous." She found him to be at MMI and reported that there was no additional treatment for his condition. (PX 13).

Dr. Pernoud went on to state, "[i]t is significant that Mr. Wentz has lost his entire right field of vision, as well as most of his superior field of vision. In fact, the side vision loss very nearly approaches his central vision making it very difficult to track even a written page. It appears he has lost 75% of his field of vision in the right eye and 70% of his field of vision in his left eye. In addition, the inability to move his eyes fully to the right constitutes an additional 20% loss of visual function in my opinion. The cumulative loss of vision, including both his visual field and his loss of binocular function would constitute an 80% total visual impairment in this gentleman." (PX 13).

Dr. Pernoud examined Petitioner again on June 28, 2012. She found that Petitioner's side vision loss was actually very comparable to that of his previous examination on March 25, 2010. She found it notable that Petitioner now had a vertical muscle imbalance that caused him to have a muscle imbalance in all fields of gaze. This, she opined, was due to the visual field abnormality whereby it is very difficult for Petitioner to fuse his two eyes and is, therefore, work related. In answer to specific questions, she reported that the current work-related diagnoses were: stroke-like visual system damage due to an anesthesia complication causing profound side vision loss and eye muscle imbalance causing double vision and restriction in eye muscle movements to the side. She found that Petitioner was not able to perform the duties of his usual occupation and was permanently impaired from a visual standpoint. She went on to state that the most significant finding at the time of Petitioner's examination was an interval change from his past examination in that he had developed a hypertropia of the right eye requiring prismatic correction in his glasses, and implying that without his prismatic correction in his glasses, he suffers double vision in all fields of gaze. In summary, Dr. Pernoud reported that Petitioner's injury had left him with 100% visual impairment due to the brain damage to his visual system. (PX 13).

Dr. Pernoud authored a third letter dated July 18, 2012, evaluating Petitioner's impairment for a Worker's Compensation Rating according to Missouri Regulations, and what requirements are necessary for a Missouri Driver's License. She reported that Petitioner's central vision is good, that his side vision is limited but apparently good enough to pass the driver's test, and that his largest issue is double vision in all fields of gaze without prismatic glasses which equate to 100% impairment according to Missouri Regulations. However, with prismatic correction in his glasses, she reported that Petitioner is able to see a single image and would be able to drive. (PX 13).

Petitioner was examined by Stephen Dolan, a licensed vocational expert, on May 30, 2012. Mr. Dolan's deposition testimony was taken on September 6, 2012. (PX 14). Mr. Dolan determined Petitioner's residual vocational profile, which is a snapshot of Petitioner's current employability. He found Petitioner to be sixty-three years old, approaching retirement age, with a ninth grade education. Petitioner spells and does math at grade school levels, reads above the high-school level, and in the past fifteen years has only worked as a driver. In the more remote past, he worked as a mechanic and a service writer, and such skills are probably either forgotten or out of date. Petitioner cannot be on his feet for significant periods of time. He cannot sit for long periods of time without elevating his feet and cannot change from sitting to standing easily. Petitioner's vision is now 80% impaired. He has a very limited field of vision. Mr. Dolan opined that Petitioner would have difficulty performing even desk work because he has difficulty tracking a written page. (PX 14, pp. 24-25).

Mr. Dolan outlined what Petitioner's transferable skills were, i.e., skills that are picked up either through education or by job experience that can then be transferred to other types of jobs, or jobs that the person has not actually done. Mr. Dolan found the only skills Petitioner has that are transferable are commercial driving skills, and his restrictions would keep him from doing those types of jobs. (PX 14, pp. 25-26).

Mr. Dolan found that Petitioner is not employable, and testified, "...I really don't think that that's even a close call. I mean he hadn't been able to maintain a full-time job since 1991. He's been working part-time under the SGA level, and now, because of his visual problem, which is primarily a visual field problem, he can't do

even that type of simple driving job." (PX 14, p. 26). Mr. Dolan also opined that Petitioner "also can't do desk work, as the doctor said, because it would just take him too long to read material." (PX 14, p. 26). Mr. Dolan testified there was no employment that would be regularly and continuously available to Petitioner; in other words, there is no stable labor market available to Petitioner. (PX 14, p. 27).

Mr. Dolan testified that Dr. Pernoud's supplemental report of July 18, 2012, in which she states that with prismatic correction in his glasses, he would be able to see a single image and would be able to drive, did not change his vocational opinion. (PX 14, p. 28). He elaborated that obviously Petitioner somehow passed the Illinois drivers test, so there is nothing new about this information and vocationally, the requirements for driving your own vehicle are very different from the requirements of driving a commercial vehicle. (PX 14, pp. 28-29). Further, Mr. Dolan testified that Petitioner would not pass the CDL test for a commercial drivers license because he has too great of a vision loss. (PX 14, p. 29). Even if Petitioner could pass a commercial driver's test and had a personal license, according to Mr. Dolan, there is "absolutely zero" likelihood of an employer hiring Petitioner for a driving job. Mr. Dolan further testified that, "[a]ny employer who hired him [Petitioner] for a driving job really needs to be psychiatrically evaluated. I mean it would really be a crazy thing to do." (PX 14, p. 29). According to Mr. Dolan, there is nothing in Petitioner's background, training, education, along with his physical and visual problems that would make him a desirable employee to a potential employer. (PX 14, p. 29).

As stated, *supra*, Ronda Wesemann testified at trial. Ms. Wesemann has been the human resource manager with Respondent for thirteen years. In that role, she is responsible for taking care of workers' compensation cases. Ms. Wesemann testified that she was familiar with Petitioner's situation and involved in the decision making on the file. She was aware that Petitioner sustained an accident while working for Respondent for which he had shoulder surgery and was given a medication as a precaution which led to a stroke. She is also aware that as a result of the stroke he experiences serious vision problems and that experts hired by Respondent's insurance carrier (Travelers) connected the use of that medication to the stroke and vision loss.

Ms. Wesemann was aware that Travelers had sent Petitioner a couple of times to see Dr. Pernoud, an eye specialist. Ms. Wesemann was asked whether she was aware that Dr. Pernoud found permanent significant side vision loss and problems with muscle function in Petitioner, to which Ms. Wesemann responded that she was not sure of the details but knew that Petitioner had vision limitations. Ms. Wesemann was aware that Petitioner was permanently impaired from a visual standpoint.

Ms. Wesemann testified that she was aware that no permanent job had been offered to Petitioner. She was aware that Petitioner was receiving weekly checks until they were stopped. When asked why the benefits were stopped, she said she had no decision-making authority in stopping the payments and that the reason for terminating the payments was because Respondent learned Petitioner had renewed his driver's license. She said that Respondent was considering offering Petitioner a part-time driving position in which he would drive a van and would not be required to have a CDL license. The driving position had "not yet" been offered and she agreed that offering such a job was against the advice of Respondent's attorney.

On February 29, 2012, Diana Johnson from Travelers Insurance Company sent a letter advising that weekly benefits were being terminated. The letter states that Travelers had voluntarily paid Petitioner at the permanent total disability rate for some time, not based on the injuries to his shoulder, but for the loss of vision. She wrote that they confirmed that on January 17, 2012, Petitioner was able to procure a drivers' license which is valid through April 16, 2016. Based on this information, she wrote, the basis for payments is no longer valid and "effective immediately, weekly benefit payments are terminated." She requested Petitioner's attorney to contact her attorney to discuss resolution of the claim based solely on the shoulder. (RX 2; PX 16).

Petitioner's attorney wrote Respondent's attorney on March 8, 2012, regarding the termination of benefits. She pointed out that Petitioner had lost a significant portion of his vision because of the medication

given as a result of his shoulder surgery. She pointed out that Petitioner could no longer qualify for his professional driving and has never maintained the position that he does not drive, and while it is recommended that he should not drive, he has to because he has no one to drive for him. She stated the actions were short sided as, to date, Travelers had not been asked to provide a personal driver for Petitioner. She demanded benefits be reinstated and if they believed Petitioner could return to some form of employment that they provide vocational assistance. (PX 16). Respondent extended an advance against permanency in the amount of $2,066.70 in July 2012. Petitioner testified that this advance helped, but did not alleviate his hardships due to the lack of payments.

CONCLUSIONS OF LAW

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

Based on the foregoing, Petitioner is entitled to receive from Respondent compensation for bills pursuant to Section 8(a) and 8.2 of the Act. Petitioner is awarded those bills set forth in Petitioner's Exhibit 15, and Respondent shall have the appropriate credit for any bills paid by it, if any. Therefore, Petitioner is awarded the sum of $322.24 from All About Eyes, $82,507.32 from St. Elizabeth's Hospital, $56,206.53 from St. Anthony's Medical Center, $70.00 from Drs. Kraemer and Vogel, $10,714.32 from Tesson Heights Orthopaedics, $2,120.00 from Radiology Consultants, $155.00 from Illinois Eye Surgeons, $601.00 from Cardiology Consultants, $2,124.00 from Midwest Emergency, $5159.94 from SLUcare, $765.00 from St. Louis Oncology Associates, $2,124.00 from Midwest Emergency Department, $35.00 from Vascular & Hand Surgery, $640.00 from Dr. Panduranga Kini, $2,156.00 from Medstar Ambulance, $30.00 from Metro Cardiology Group, and $360.00 from Metropolitan Neurology. All such awarded sums shall be paid as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit of $35,605.25 for medical benefits that have been paid.

Issue (K): What temporary benefits are in dispute?; and

Issue (L): What is the nature and extent of the injury?

There is no dispute that Petitioner sustained an accidental injury on January 29, 2009, when he slipped and injured his left shoulder. There is additionally no dispute that he suffered complications from his work-related surgery that resulted in a permanent vision loss. While his shoulder does not impact his return to work, his vision loss does.

Petitioner alleges he was temporarily and totally disabled from May 14, 2009 through October 27, 2009, and that he is permanently and totally disabled from October 28, 2009 through the present. Respondent agrees with the period of TTD, but disputes that Petitioner is permanently and totally disabled.

Because of his permanent vision loss, Petitioner cannot return to his job as a commercial driver. Additionally, according Dr. Pernoud, Respondent's examining physician, Petitioner would only be capable of limited desk work and his visual field is restricted so severely that any work requiring movement will be very difficult and potentially dangerous.

Mr. Dolan, a vocational expert, evaluated Petitioner and concluded from his testing, review of materials, and based upon his age, education, work experience and restrictions, that Petitioner no longer had reasonable access to a stable labor market.

Respondent has not offered a job to Petitioner, nor has it provided vocational assistance. Additionally, Respondent has not provided any evidence that there is some kind of suitable work that is regularly and continuously available to Petitioner.

The Arbitrator finds that Petitioner was temporarily and totally disabled for 21 6/7 weeks from May 14, 2009 through October 27, 2009, and awards TTD benefits for that period of time in the amount of $4,517.22 (21 6/7 x $206.67). The Arbitrator finds that Petitioner's condition was permanent when Dr. Markenson released him from his care on October 27, 2009.

The Arbitrator finds that Petitioner is permanently and totally disabled pursuant to Section 8(f) of the Act, and awards the sum of $461.78 per week, for life, for 151 4/7 weeks ($69,992.65), commencing on October 28, 2009 through the date of hearing, September 25, 2012, and ongoing, which is the period of PTD for which compensation is payable. Respondent shall pay Petitioner the remainder of the award in weekly payments.

Respondent shall have credit for all amounts paid to Petitioner on account of said work injury. Respondent has paid $48,514.46 for weekly payments in the form of TTD, maintenance and PTD benefits. Therefore, Respondent owes Petitioner $25,995.41 in back benefits. Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, as provided in Section 8(g) of the Act.

Issue (M): Should penalties or fees be imposed upon Respondent?

Petitioner alleges he is owed penalties and attorneys' fees under Section 19(k) and Section 16 of the Act because Respondent acted in an unreasonable and vexatious manner in terminating his benefits in early 2012. The Arbitrator denies to award penalties and attorneys' fees in this matter. Petitioner's benefits were terminated after Respondent learned Petitioner was granted a driver's license and was known to be driving. Petitioner himself admitted that he drove, alone, to Wyoming for the sole purpose of alleviating apparent boredom. The Arbitrator does not find Respondent's actions in this regard to be unreasonable and vexatious, and therefore denies Petitioner's request for penalties and attorneys' fees.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MAURICE JENKINS,

Petitioner,

14IWCC0092

vs.

NO: 05 WC 48316

WALSH CONSTRUCTION,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability and permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Findings of fact and conclusions of law

The Commission finds:

1. Petitioner is a Master Carpenter. He was working on the Dan Ryan Expressway on October 17, 2005. While working, he was hit in the head with a piece of lumber that was nine feet above him. The next thing he remembers is waking up and asking others what had happened. He was told he was hit in the head.

2. Petitioner treated at Concentra Medical Center that same day, but was allowed to return to his normal work duties.

3. Over the next 2 days, Petitioner complained of head pain, amnesia, blurred vision, light

headedness and disorientation. His work status was modified on October 19, 2005, and he was ordered not to work in a safety sensitive position.

4. Subsequently, On October 21, 2005, Petitioner was asked by Respondent to work one of the known safer areas of a construction site, in keeping with his modified restrictions. However, Petitioner refused, got into an altercation with Respondent's agents, and was terminated for insubordination.

5. Petitioner's post-accident treatment records continuously noted symptoms such as psychosis, seizures, dizziness, hallucinations and schizophrenia.

6. Dr. Schrift began treating Petitioner in November 2006. He diagnosed him with complex partial seizures, a form of epilepsy. Dr. Schrift noted that, prior to the accident, Petitioner wrote songs and played instruments. Petitioner now describes difficulty doing these things. Dr. Schrift opined that this was consistent with mood and anxiety disorders related to epilepsy.

7. Petitioner testified that he was first diagnosed with a seizure disorder when he was a teenager. His girlfriend testified that he has had epilepsy since childhood, and that he began having seizures at a young age after a childhood fight with his brother.

8. A Dr. Rossi testified that he was unable to establish a start to Petitioner's seizure disorder. Thus, he opined that no permanent injury resulted from the accident in question.

9. Respondent had Petitioner's medical records reviewed by Dr. Zollman, who opined that Petitioner suffered a mild traumatic brain injury/concussion. He opined that Petitioner's symptoms lasted for about one month. Dr. Zollman also noted that Petitioner had suffered brain injuries since childhood. He suffered a second brain injury in February of 2004, and a third in April of 2006. He opined that the work accident in question was not the reason for any current disabilities Petitioner may suffer from. Other premorbid conditions (such as epilepsy) are the likely cause. Dr. Zollman noted that only 10-15 percent of people have persistent symptoms after a mild brain injury.

10. Character witnesses suggested that Petitioner was mild mannered, likable and a good role model prior to the accident in question. They indicate that they have noticed a change in Petitioner's demeanor since the accident.

11. Petitioner acknowledged his pre-accident history of 13 arrests, 5 of which were felonies and 8 misdemeanors. He attributed this to false information, the "dumbness" of police and his childhood environment in the projects, which forced him to defend himself.

12. Dr. Zollman noted a series of pre-accident altercations involving Petitioner, including a

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1997 domestic incident with a previous girlfriend.

13. In the 18 months prior to Arbitration, Petitioner stated that his condition had improved, as he has been prescribed steady medication by Dr. Schrift.

14. Dr. Schrift stated that patients are occasionally non-compliant with taking medication due to the side-effects. However, he stated that Petitioner has generally been compliant.

15. Dr. Zollman noted that treatment records indicate Petitioner suffered from seizures when he missed doses of his medication.

The Commission affirms the Arbitrator's rulings on the issues of accident, causal connection, medical expenses and permanent partial disability.

The Commission, however, modifies the Arbitrator's ruling on temporary total disability.

Due to Dr. Zollman's opinion that Petitioner's brain injury was accompanied by symptoms lasting one month, the Commission modifies the temporary total disability (TTD) award, and awards Petitioner four (4) weeks of TTD benefits.

The Commission affirms all else.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent is liable for 4 weeks of temporary total disability benefits (October 21, 2005 through November 17, 2005).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:
O:12/12/13 FEB 10 2014
DLG/wde45
45

David L. Gore

Mario Basurto

Michael P. Latz

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION
CORRECTED

JENKINS, MAURICE
Employee/Petitioner

Case# **05WC048316**

14IWCC0092

WALSH CONSTRUCTION
Employer/Respondent

On 3/22/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.11% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2830 THE MARGOLIS FIRM PC
CHARLES J CANDIANO
55 W MONROE ST SUITE 2455
CHICAGO, IL 60603

1622 HINSHAW & CULBERTSON LLP
ROBERT J FINLEY
221 N LASALLE ST SUITE 300
CHICAGO, IL 60601

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STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION CORRECTED DECISION

Maurice Jenkins
Employee/Petitioner

v.

Walsh Construction
Employer/Respondent

Case # **05** WC **48316**

Consolidated cases:

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Richard Peterson on June 27, 2011; August 1, 2011; August 26, 2011; and Lynette Thompson-Smith, on December 6, 2011; October 30 and October 31, 2012, Arbitrators of the Commission, in the city of Chicago. After reviewing all of the evidence presented, Arbitrator Thompson-Smith hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☒ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☒ Is Respondent due any credit?
O. ☐ Other

FINDINGS

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On **10-17-05**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is partially,* causally related to the accident.

In the year preceding the injury, Petitioner earned **$73,840.00**; the average weekly wage was **$1,420.00**

On the date of accident, Petitioner was **41** years of age, *single* with **0** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent is entitled to a credit of $20,281.99; $5,278.67 for medical payments and $15,003.32 for union disability payments, pursuant to Section 8(j) of the Act.

ORDER

Temporary Total Disability
Respondent shall pay Petitioner temporary total disability benefits of $946.66/week for 365 3/7 weeks, commencing 10-21-05 through 10-31-12, as provided in Section 8(b) of the Act.

Medical benefits
Respondent shall pay the outstanding, reasonable and necessary medical services up to $154,358.90 directly to the service providers, pursuant to Sections 8(a) and 8.2 of the Act.

Permanent Total Disability
Petitioner has not proven that he is permanently, totally disabled therefore Respondent shall pay Petitioner benefits of $591.77/week for 250 weeks as the injury has resulted in 50% loss of use of a man as a whole, as provided in Section 8(d)2 of the Act.

Penalties and attorney's fees
No penalties or attorneys fees are awarded.

RULES REGARDING APPEALS: Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE: If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

March 22, 2013

MAR 22 2013

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The disputed issues in this matter are: 1) accident; 2) causal connection; 3) medical bills; 4) temporary total disability; 5) penalties; 6) attorney's fees; and nature and extent. *See*, AX1.

Mr. Maurice Jenkins, hereafter referred to as (the "Petitioner"), worked for Walsh Construction Company hereafter referred to as (the "Respondent") in the capacity of a union carpenter. On October 17, 2005, a co-worker dropped a two-foot piece of oak lagging board, from approximately fifteen (15) to twenty (20) feet above. The board hit the left front brim of Petitioner's hardhat, knocking off and bending his corrective lens glasses. Walsh Safety Manager, James Conway, investigated the accident and prepared the first report of injury. Mr. Conway drove Petitioner to the occupational clinic at Concentra where the doctor took a history. i.e., "The patient states that he had a piece of wood fall from about 15 feet onto his head. He did have a hard hat on. The incident happened three (3) hours ago, and he still feels a little foggy. He is concerned with further damage. The pain is located on the left forehead". The pain was described as aching, ill defined and non-radiating. The doctor further noted that Petitioner's symptoms were exacerbated by working and he could not identify any alleviating factors. The petitioner denied loss of consciousness, dizziness, headache, nausea, vomiting, neck pain, paresthesias, bleeding, and had a full recollection of the event. The physical examination of his head revealed no ecchymosis or sinus tenderness or soft tissue swelling. Tenderness at the left forehead directly about the eyebrow was noted. The doctor diagnosed a face/scalp contusion. He was taken off work for the rest of his shift, given a prescription for Ibuprofen; and instructed to return the next day for a follow-up evaluation. *See*, PX5 & RX A, B.

On October 18, 2005, Petitioner returned to the doctor's office with complaints of sporadic head pain and amnesia. Petitioner stated that his head took the brunt of the hit when a piece of oak wood weighing approximately 25 pounds fell approximately 25 feet, hitting him on the front of his helmet. Since then he stated that he was having shooting pains in his head, slight sporadic blurred vision in his left eye and temporary memory loss. Petitioner denied loss of consciousness, neck or back pain. While at the

doctor's office, he began to demonstrate confused behavior; wandering around the office and not answering simple questions. Concentra transported him by ambulance to the emergency room of Mercy Hospital ("Mercy"), where he continued to make complaints of left forehead tension and shocks, confusion, and memory loss. He gave a history of wood falling 20 feet and hitting his hard hat. His physical examination was normal and the review of systems was negative, including alert and oriented signs; no posterior midline cervical spine tenderness, there was a normal level of alertness; there was no focal neurological deficit, and no painful distracting injuries. The examining physician at Mercy did not record any apparent physical injury; there was no bruising, scabs or scratches. Diagnostics films and tests were negative and he was given Tylenol for pain to his forehead and left eye. *See,* PX1 & 2.

On October 19, 2005, Petitioner again presented to Concentra, complaining of light-headedness and disorientation. He stated that he could not remember certain events that had happened yesterday; however, he remembered the traumatic event that caused the accident. He complained about "being no better at his job" though he had not worked since the day of the accident. The only physical finding on examination was tenderness above his left eyebrow. Petitioner was prescribed Ibuprofen and his work activity status was modified, i.e. he was ordered not to function in a safety sensitive position. Petitioner returned to work with his restrictions and was terminated for insubordination; after becoming aggressive with his supervisor and refusing to work in a certain area that the respondent states was within his restrictions. *See,* PX5.

On October 20, 2005, the doctor's continued diagnosis was contusion of the face, scalp and neck with the petitioner being in no acute distress. The CT scan of Petitioner's head was read as normal; his prescription was continued and he was advised to return on an urgent basis if the symptoms worsened.

On October 27, 2005, the Petitioner still reported headaches and stated that he was given Vicodin at the emergency room, which helped the pain. The doctor noted that the petitioner was taking his prescribed medications but still had pain located on the frontal scalp. He again denied loss of consciousness, dizziness and nausea. The Arbitrator

notes that the doctor states that "He still feels like he is "slower" and does not work or think as fast as he did before he was hit on the head. Patient has been working within the duty restrictions". The Arbitrator further notes that from testimony at trial, the petitioner was not working for Respondent, at this time. On this date, the petitioner was released from medical care and no further visits were authorized. *See*, PX5.

On February 17, 2007, the petitioner presented to Dr. Michael J. Schrift and the doctor noted that the petitioner has epilepsy with post concussion syndrome and a history of cerebrovascular disease, traumatic brain injury, and epilepsy; and exhibits paranoia and depression, which he claims, is because he cannot resume working. *See*, PX8.

Approximately one (1) year later, on February 27, 2008, the petitioner was admitted to the locked psychiatric unit of Jackson Park Hospital and place on close observation and medicated. He was expected to stay for approximately two (2) weeks. *See*, PX 7.

On March 19, 2008, the petitioner is diagnosed as having bipolar disorder with seizure disorder. *See*, PX6.

On May 23, 2008, Petitioner presented with auditory hallucinations, violent behavior and paranoia. He feared that his mother and brother were trying to kill him. He stated that his paranoia started after he was hit on the head while working in 2005 and he discussed having seizures and passing out. He stated that he finished high school without many problems and had been "in construction since age 19". The doctors' impressions were: since memory dysfunction is the most common cognitive impairment reported after a head injury and Petitioner's performance in memory related tasks was in the average range; there was no indication of such an experience. They also stated that informational processing speed also tends to decrease, as a result of a head injury and the petitioner did not demonstrate significant speed deficits in tasks involving processing information. The doctor's assessment was that petitioner exhibited a significant change in his personality, which was likely caused by his history of head trauma, although he did not delineate the significant traumatic events in Petitioner's

history. Petitioner was diagnosed as having schizophrenia/paranoia psychosis. *See,* PX3.

Witness by Deposition: Dr. Felise Zollman

Dr. Felise Zollman, the respondent's independent medical examiner, testified on two (2) occasions, January 27, 2010 and March 10, 2010. She did not physically examine the petitioner but rather reviewed his medical records. They indicated that he had been having seizures since 1993 and was hospitalized in August of 2003. The history provided at that time was that the petitioner had had an old head trauma as a child and that he had not been taking his seizure control medication, i.e. Dilantin; which put him at a greater risk for having seizures. She opined that "the symptoms that Petitioner complained of, after the accident, appeared to have resolved within one month, because it is not the nature of a mild traumatic brain injury, typically, to cause the type of significant impairment that would keep someone out of work for an extended amount of time". She reviewed Petitioner resulting brain injuries from a motor vehicle accident on February 2, 2004. She also testified that the petitioner's aggression and behavioral changes that resulted in his termination from work may be related to the work accident but because the petitioner had prior arrests for assault, etc. he seemed to exhibit a pattern of periodic, aggressive behavior. She also reviewed a forensic, psychiatric report from a Dr. Nadkarmi, which had been ordered by the Court to determine if the petitioner was competent to stand trial. The Arbitrator notes that this report was not produced as an exhibit to Dr. Zollman's deposition and therefore was unavailable for the Arbitrator's review. The Arbitrator also notes that on October 28, 2007, the petitioner was recorded fighting with an individual in a fast food restaurant then assaulting a police officer who was apparently called to the scene. The petitioner and two officers were in a struggle, which lasted approximately five (5) minutes, before both officers were able to subdue him. The petitioner was subsequently arrested and the Arbitrator can only presume that these were the circumstances for which this report was ordered. Dr. Zollman also reviewed Dr. Nettem's records of February 7, 2006, when Petitioner presented for a physical examination, which history states that the petitioner denied any complaints and upon examination stated that his last seizure was two months prior and

was awake, alert and under no distress. The doctor ordered blood work. On February 10, 2006, upon examination, the petitioner again presents with no complaints and Dr. Zollman testifies that on this date, the petitioner reported no further symptoms which would be reasonably related to a brain injury, i.e. no report of headache, memory loss, confusion etc. On cross-examination, the doctor testified that once a person has had three or more brain injuries or concessions, the risk of cumulative residual impairment increases. In the doctor's continuing deposition, taken on March 10, 2010, she testified that upon the petitioner initial diagnosis of epilepsy, which occurred around age four and a history of him moving toward cognitive and neuropsychiatric issues; this condition was manifested by intermittent behavioral problems; and she opined that his medical records reflected that he had been diagnosed as having a thought disorder, i.e., schizophrenia, rather than a mood disorder, i.e. bipolar disorder. She also reviewed Respondent's Exhibit 31, attached to the first deposition, which is a report from Madden Mental Health Center which diagnosed Petitioner as having 1) mood disorder; 2) epilepsy, 3) history of injury; and 4) interpersonal problems, testifying that those doctors obviously disagreed with her opinion, as they stated that the petitioner initial problem was a mood disorder. *See,* PX55, RXs E, pgs. 30-58, 77-87; F, pgs 5-12; 21-28; & K.

Dr. Zollman further testified that the blow to Petitioner's head was "quite possibly" responsible for the uncharacteristic irritability displayed by Petitioner in the days following his accident, which served as the Respondent's basis for terminating Petitioner's employment due to insubordination. *See*, RXs F& E. Dr. Zollman opined that statistically, individuals who sustain a concussion such as that sustained by the petitioner, would generally be expected to have their symptoms completely resolve within 10-14 days. Dr. Zollman reviewed the records of Dr. Munoz who treated Petitioner for approximately one month post-accident for symptoms, which included persistent severe headaches and memory loss. Dr. Zollman also testified that approximately 10 to 15% of people, who have a mild traumatic brain injury, would also have persistent symptoms, i.e., post-concussive syndrome. *See*, RX41.

Witness by Deposition: Dr. James L. Reilly

After a stringent direct examination by Respondent's attorney, the following facts were elicited: that Dr. James L. Reilly, assistant professor at the University of Illinois. Department of psychiatry was non-board certified. He performed a clinical evaluation of Petitioner, on April 24, 2007, upon request of Dr. Schrift. His report concluded that the petitioner has a persistently elevated anxiety, as a result of his work site accident of October 17, 2005. This conclusion was based upon Dr. Reilly's interviews with the Petitioner, his mother and his girlfriend, Ms. Fay Hopkins; and the information that the petitioner provided in the neuropsychological history questionnaire as well as his interpretation of data that the petitioner provided on a number of clinical testings, including but not limited to a MMPI. The doctor only reviewed medical records that were post-accident i.e., from October 17, 2005 through April 24, 2007; and did consider pre-existing conditions i.e., anxiety disorder or similar types of complaints based on the Petitioner's integrative history. He concluded, on the available information, that it did not seem likely to him that the pre-existing issues were relevant. In addition, the doctor testified that there is a strong degree of likelihood that there was an association between the emergence of Petitioner's anxiety symptoms and his accident. The doctor admitted that statistically speaking, the petitioner's anxiety could be a function of his epilepsy and the stress of him being unemployed. He also testified that Petitioner's score on the MMPI-2 tests under the lie scale was 74, which indicated upwards of two standard deviations above normal and would be considered elevated; and that most of petitioner's additional scores were elevated. The doctor further testified that those scores, taken with his responses across all of the scales, did not invalidate his profile and that the petitioner's tests indicated that he was not demonstrating sub-optimal performances on these tests or that he was malingering. *See,* RX H, pgs 8-78.

Witness by Deposition: Dr. Marvin Rossi

Dr. Rossi testified, after reviewing Petitioner's medical records that he could not established a baseline for the petitioner's seizure disorder. *See* RX G.

Witness at hearing: Ms. Faye Hopkins

The Commission heard testimony from Petitioner's companion, Faye Hopkins. Ms. Hopkins testified in August 2011, that she had known Petitioner, well, since they met in 2002. She further testified that she had daily telephone conversations with Petitioner and that they would go out or spend time with one another at least two (2) to three (3) days per week. Ms. Hopkins testified that she never witnessed Petitioner exhibit violent behavior prior to the accident, nor did she ever witness him lapse into extended states of depression, until after his injury. Ms. Hopkins testified that within three (3) to four (4) days of his accident, Petitioner began exhibiting cognitive difficulties, uncharacteristic aggression; and he was short tempered. Ms. Hopkins also testified that since his accident she has observed Petitioner complain of constant fatigue, to be inarticulate in his speech, to have balance issues; and to have a tendency to "zone" or seem to be staring into space.

Witness at hearing:

The Commission heard testimony from Mr. Joe Payne. Mr. Payne testified that he has known Maurice Jenkins for many years. Mr. Payne further testified that in 2001, he was working as a union Carpenter in Chicago and that he worked on jobs, side-by-side, with Petitioner for Scandinavia Construction Company. Mr. Payne testified that Petitioner had the reputation in the trade community for being dependable and a very hard worker. Mr. Payne also testified that he personally observed Petitioner as being a competent carpenter and a very hard worker. Mr. Payne also testified that Petitioner always exhibited what he termed as an outstanding, bubbly personality and that the petitioner's personality had changed after the accident. On cross-examination, the witness testified that he was arrested for robber and spent eighteen (18) months in a state penitentiary, in 1987-1988.

Witness at hearing:

The Commission also heard testimony from Mr. Darrell Jacobson. Mr. Jacobson testified that he had known Petitioner since the two of them went through high school

together as close friends. As they were growing up, Mr. Jacobson testified that Petitioner and he were among the biggest kids in their class, which made them targets for other young men who were trying to prove themselves. This situation resulted in a number of fistfights. Petitioner testified that he was frequently challenged to fight as a young man and that these altercations resulted in multiple contacts with law enforcement, though he was never charged with any crime on those occasions.

Mr. Jacobson testified that he loved the petitioner "like a brother" and always enjoyed his company but that since the accident, Mr. Jacobson literally "cannot stand to be in his company because of the change in Petitioner's personality." When asked to elaborate, Mr. Jacobson explained that Petitioner is nothing like his former self and that he used to be an "easy going, nice guy." Mr. Jacobson testified that "now Petitioner is so confrontational and has such a short fuse that it is virtually impossible to go out in public with him."

Witness at hearing:

The Commission heard testimony from Mr. Gerald Hamilton, a retired homicide detective, who is a 30-year veteran of the Chicago Police Department. Mr. Hamilton testified that he owned two of the three homes on the block when Petitioner's family moved into the third home, sometime in 1979. Mr. Hamilton further testified that he was not just a neighbor to Petitioner and his family but they were like family. Mr. Hamilton demonstrated an intimate familiarity with Petitioner's family including the names and ages of his family members, his awareness that Petitioner's mother died from cancer, and his attendance at her funeral. Mr. Hamilton also testified that throughout the time he was a neighbor and close friend of Petitioner's family, he fostered a number of youths. Mr. Hamilton further testified that the boys he fostered when Petitioner was in his teens, were the same age as Petitioner. Mr. Hamilton testified that his foster children and Petitioner would often engage in activities together such as playing basketball or softball. Mr. Hamilton explained that these joint activities provided still additional opportunities for Mr. Hamilton to observe Petitioner, as he was growing up. Mr. Hamilton described Petitioner as a nice young man, a good person and

someone whose entire family looked up to as a role model because he had risen above poverty, learned a trade and was earning a good living.

Witness at hearing:

Treating neuro-psychiatrist, Dr. Michael Shrift, testified that Dr. Zollman's assertions were reasonable assuming a healthy brain and no prior injuries, which assumption was entirely unwarranted in the case of Petitioner. In his testimony, Dr. Schrift emphasized that Petitioner did not have a healthy brain at the time of the accident. Various radiographic studies performed contemporary to the accident disclosed an old injury. Dr. Schrift testified that those studies memorialized a distant event, which had caused the death of certain brain cells and thereby compromising Petitioner's brain, making his brain more vulnerable to injury. Dr. Schrift testified that traumatic brain injury is cumulative in nature and explained that Petitioner's pre-existing epilepsy, alone, is evidence that he did not have a healthy brain at the time of the accident. Dr. Schrift further testified that Petitioner's assertion that his seizure disorder was controlled prior to the incident on October 17, 2005, but much less so after the accident, is entirely consistent with the medical science.

Dr. Schrift further testified that certain brain structures are several feet long and extend from the brain throughout the length of the spinal cord. Dr. Schrift explained that when someone suffers a blow to the head, there is a very rapid acceleration and concomitant deceleration, which can cause a shearing effect, damaging these long structures. Dr. Schrift further explained that the structures cannot heal or regenerate once they are gone. In further support of Dr. Shrift's opinion that Petitioner sustained additional damage to his brain on October 17, 2005, which continues to contribute to his present state of ill being, Dr. Schrift discussed various radiographic studies performed shortly after the accident, which demonstrated multiple localized areas of hypo-perfusion (reduced blood flow) in the cortex of Petitioner's brain. These areas included the dorso-lateral prefrontal cortex, the orbito-frontal areas and temporal lobes. Dr. Schrift explained that these areas are additionally prone to traumatic injury because, the cranium supports these areas of the brain by means of a bone shelf. And when there is

trauma to the area of the forehead, Dr. Schrift explained that the brain slams against this hard bony shelf, causing injury to the brain. The doctor testified that this was the mechanism of injury that the petitioner had suffered. Dr. Schrift testified that these areas of the brain are responsible for executive functioning, which includes such things as decision-making, the ability to plan, the ability to focus one's attention and the ability to conduct one's self in accordance with societal norms.

The Arbitrator viewed security video from a restaurant that Petitioner patronized on October 28, 2007. *See,* PX55. The video depicts Petitioner standing in the lobby of a take-out restaurant, holding a briefcase, and then he suddenly appears to be hoarding ketchup packets. Without apparent provocation or motive, Petitioner begins fighting with patrons and eventually fighting with responding law enforcement officers. This incident gave rise to felony charges of battery on law enforcement. Dr. Shrift was present in the hearing room for the viewing of this video and he explained that Petitioner was experiencing what Dr. Schrift called postictal psychosis. Dr. Schrift explained that Petitioner's seizure activity is responsible for postictal psychosis, which is characterized as auditory and visual hallucinations, delusions, paranoia, affect change, and aggression, which can last for hours or days. Many of these characteristics are clearly visible in the video, as pointed out by Dr. Shrift during his direct examination. There is no evidence that Petitioner ever experienced such a state, prior to his work injury of October 17, 2005.

Witness at hearing:

Mr. Maurice Jenkins

A review of that transcript of the petitioner's testimony was not very helpful. On only two occasions did he answer questions with some clarity, which was when he was asked if he was a "fun-loving and easy going guy" prior to the accident and some of the questions regarding his arrests. *See,* Tr. of August 26, 2011, pgs. 39-44. The rest of the transcript shows a petitioner who has either loss most of his memory regarding this accident and his subsequent medical treatment; or one who is skillful in evading answers to questions he does not wish to answer. However, the Arbitrator notes that

she had three (3) pre-trials with both attorneys and the petitioner and his uncle; and finds that the Petitioner, while obviously in a deteriorated mental and physical state; was able to express himself with decorum and explain his situation, as he sees it. In addition, on a later date, he testified more coherently. *See*, Tr. of October 30, 2012.

CONCLUSIONS OF LAW 14IWCC0092

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

Under the provisions of the Illinois Workers' Compensation Act (the "Act"), the Petitioner has the burden of proving, by a preponderance of credible evidence, that the accidental injury both arose out of and occurred in the course of employment. *Horath v. Industrial Commission*, 96 Ill. 2d 349, 449 N.E. 2d 1345 (1983). An injury arises out of the Petitioner's employment if its origin is in the risk connected with or incidental to employment so that there is a causal connection between the employment and the accidental injury. *See, Warren v. Industrial Commission*, 61 Ill. 2d 373, 335 N.E. 2d 488 (1975). *See also, Technical Tape Corp. v. Industrial Commission*, 58 Ill.2d 226 (1974). The mere fact that the worker is injured at a place of employment will not suffice to prove causation. The Act was not intended to insure employees against all injuries. *See, Quarant v. Industrial Commission*, 38 Ill. 2d 490, 231 N.E. 2d 397 (1967). The burden is on the party seeking an award to prove, by a preponderance of credible evidence, the elements of the claim; particularly the pre-requisite that the injury complained of arose out of and in the course of employment. *See, Hannibal, Inc. v. Industrial Commission*, 38 Ill. 2d 473, 231 N.E. 2d 409, 410 (1967).

The Arbitrator finds from a review of the record and testimony of the witnesses that Petitioner did have an accident that arose out of and in the course of his employment.

F. Is Petitioner's current condition of ill-being causally related to the injury?

In making a claim under the Workers' Compensation Act, (the "Act"), an employee bears the burden of proving all of the elements of his case including the extent and permanency of his injury. It is within the province of the Commission to determine the factual issues, to decide the weight to be given to the evidence and the reasonable inferences to be drawn there from; and to assess the credibility of witnesses. *See, Marathon Oil Co. v. Industrial Comm'n*, 203 Ill. App. 3d 809, 815-16 (1990). Moreover, it is the province of the Commission to decide questions of causation, and to resolve conflicting medical

evidence. *See, Steve Foley Cadillac v. Industrial Comm'n,* 283 Ill. App. 3d 607, 610 (1998).

A careful review of Petitioner's medical records demonstrates that prior to the work accident, he had a childhood trauma to his head which subsequently resulted in him acquiring an epileptic condition. He also suffered additional injuries to his head in a motor vehicle accident in February of 2004. However, there is unrebutted testimony from several witnesses, including the petitioner that he was working in a full duty capacity, as a union carpenter, for several years before the work accident and was apparently able to work compatibly with his co-workers and supervisors. There is also unrebutted testimony that the petitioner's personality changed after the accident and while some of the witnesses who testified for the petitioner also testified that they had been incarcerated early on in their lives, the Arbitrator finds that their testimony regarding the change in the petitioner's personality, after the accident, to be credible. The Arbitrator also notes that the petitioner has had accidents, since the work accident; stemming from his failure to take anti-seizure medication as well as "run ins" with law enforcement as a result of anti-social behavior; which may well be because of his failure to take prescribed medications. Currently, Dr. Schrift has testified that he believed that Petitioner's epilepsy was exacerbated by the accident becoming more frequent and intense. However, the doctor was not aware of and had not reviewed the petitioner's medical records from him falling and hitting his head in April of 2006 and was also unable to review any of petitioner's medical records prior to the accident therefore was not able to establish a baseline condition of petitioner head injuries. It is established law that at hearing, it is the employee's burden to establish the elements of his claim by a preponderance of credible evidence. *See, Illinois Bell Tel. Co. v. Industrial Comm'n.,* 265 Ill. App. 3d 681; 638 N.E. 2d 307 (1st Dist. 1994). This includes the issue of whether Petitioner's current state of ill-being is causally related to the alleged work accident. *Id.* A claimant must prove causal connection by evidence from which inferences can be fairly and reasonably drawn. *See, Caterpillar Tractor Co. v. Industrial Comm'n.*, 83 Ill. 2d 213; 414 N.E. 2d 740 (1980). In addition, causal connection can be inferred. Proof of an employee's state of good health prior to the time of injury and the change

immediately following the injury is competent as tending to establish that the impaired condition was due to the injury. *See, Westinghouse Electric Co. v. Industrial Comm'n*, 64 Ill. 2d 244, 356 N.E.2d 28 (1976). Furthermore, a causal connection between work duties and a condition may be established by a chain of events including Petitioner's ability to perform the duties before the date of the accident and inability to perform the same duties following that date. *See, Darling v. Industrial Comm'n*, 176 Ill.App.3d 186, 193 (1986). Here, the petitioner was admittedly not in perfect health but was able to work at a complex job and maintain a decent lifestyle. He has not worked since the accident and has had intervening accidents since that time, according to his doctor, due to the exacerbation of his epileptic condition, which has resulted in elevated seizure activity. In addition, he is now exhibiting anti-social behaviors toward total strangers, resulting in him being hospitalized and/or incarcerated, which he apparently was not doing while he was working as a union carpenter. The Arbitrator finds that the petitioner's current condition of ill-being is causally related to the accident.

J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

The respondent has not provided all reasonable and necessary services or paid for them. The remaining bills are as follows:

UIC Department of Psychiatry Medical Bill

Charges	Date of Service	Fee Schedule Amount
$90.00	08-10-06	($106.88)
$90.00	08-12-06	($85.02)
$150.00	08-14-06	($142.64)

Charges	Date of Service	Fee Schedule Amount
$350.00	11-10-06	($212.54)
$130.00	12-19-06	($107.86)

$130.00	01-03-07	($107.86)
$130.00	01-17-07	($107.86)
$130.00	03-30-07	($107.86)
$130.00	04-17-07	($107.86)
$750.00	04-24-07	($570.00 POC76)
$1,250.00	04-24-07	($950.00 POC76)
$130.00	05-03-07	($107.86)
$130.00	05-17-07	($107.86)
$130.00	07-23-07	($107.86)
$130.00	09-07-07	($107.86)
$130.00	10-23-07	($107.86)
$130.00	12-18-07	($107.86)
$55.00	01-11-08	($109.98)
$55.00	01-24-08	($109.98)
$55.00	02-04-08	($109.98)
$55.00	02-15-08	($109.98)
$55.00	06-20-08	($109.98)
$80.00	08-19-08	($129.98)
$76.00	09-12-08	($129.98)
$76.00	10-08-08	($129.98)
$76.00	11-11-08	($129.98)
Charges	Date of Service	Fee Schedule Amount
$76.00	03-17-09	($136.96)
$76.00	04-14-09	($136.96)

$76.00	06-20-09	($136.96)
$76.00	08-12-09	($136.96)
$71.00	10-20-09	($136.96)
$71.00	11-18-09	($136.96)
$71.00	03-29-10	($134.93)
$71.00	04-19-10	($134.93)
$71.00	06-02-10	($134.93)
$71.00	07-15-10	($134.93)
$71.00	09-21-10	($134.93)
$71.00	11-04-10	($134.93)
$71.00	01-03-11	($136.29)
$71.00	02-07-11	($136.29)
$71.00	03-02-11	($136.29)
$71.00	04-25-11	($136.29)
$71.00	05-31-11	($136.29)
$29.20	05-20-11	($ 29.20)
$21.00	05-20-11	($ 21.00)
$1,112.00	05-20-11	($1,170.06)
$877.00	05-20-11	($666.52)
$37.65	05-20-11	($37.65)
$88.00	05-20-11	($88.00)
$184.00	05-24-11	($105.52)
$164.00	05-24-11	($44.83)
$146.00	05-24-11	($47.39)

$24.00	05-24-11	($15.74)
Charges	Date of Service	Fee Schedule Amount
$120.00	05-24-11	($77.59)
$97.00	05-31-11	($136.29)
$104.00	07-06-11	($136.59)
$158.00	09-07-11	($64.39)
$135.00	09-07-11	($31.84)
$26.00	09-07-11	($11.02)
$104.00	09-07-11	($95.40)
$104.00	11-09-11	($95.40)
$203.00	11-15-11	($115.96)
$197.00	11-15-11	($73.86)
$26.00	11-15-11	($11.02)
$129.00	11-15-11	($54.31)
$39.00	11-15-11	($39.00)
$39.00	11-15-11	($39.00)
$104.00	03-19-12	($97.22)
$158.00	03-20-12	($54.73)
$135.00	03-20-12	($37.34)
$26.00	03-20-12	($14.81)
$72.00	03-20-12	($38.30)
Charges	Date of Service	Fee Schedule Amount
$104.00	05-14-12	($97.22)
$109.00	08-09-12	($97.22)

Total $10,150.63

City Of Chicago EMS Medical Bills

Emergency Care calculated at POC76

Charges	Date of Service	Fee Schedule Amount
$299.00	10-18-05	($227.24)
$465.00	06-04-07	($353.40)
$521.00	06-21-07	($395.96)
$505.00		($383.80)

Total $1,432.16

UIC Pathology Medical Bills

Charges	Date of Service	Fee Schedule Amount
$36.00	09-26-06	($125.59)
$284.00	12-05-06	($870.00)
$83.00	01-03-07	($220.14)

Total $403.00

Foundation For Emergency Services Medical Bill St. Bernard Hospital

Charges	Date of Service	Fee Schedule Amount
$208.00	05-22-08	($199.97)

Total $199.97

Radiological Physicians, Ltd Medical Bill Mercy Hospital

Charges	Date of Service	Fee Schedule Amount
$151.00	04-13-06	($138.86)

Total $138.86

Pathology Consultants Medical Bill

Charges	Date of Service	Fee Schedule Amount
$58.00	04-13-06	($171.58)

Total $58.00

Crandon Emergency Physicians (South Shore Hospital) Medical Bill

Charges	Date of Service	Fee Schedule Amount
$386.00	10-28-07	($294.16)

Total $294.16

AMIC Advanced Medical Imaging Center Medical Bill

Charges	Date of Service	Fee Schedule Amount
$1,452.00	04-27-06	($1,246.93)

Total $1,246.93

Anil Gulati. M.D. Neurologist Medical Bill

Charges	Date of Service	Fee Schedule Amount
$275.00	06-22-06	($283.39)
$125.00	07-20-06	($82.18)
$125.00	08-02-06	($82.18)
$150.00	04-10-07	($124.64)

Total $564.00

UIC Hospital Medical Bills

Charges	Date of Service	Fee Schedule Amount
$2,622.00	08-03-06	
	08-04-06	

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	08-09-06	
	08-11-06	
	11-21-06	
	02-23-07	($1,751.42)
$11,000.00	08-04-06	
$500.00	08-04-06 to 08-14-06	
$10,200.00	08-04-06 to 08-14-06	(ROOM)
$83.15	08-04-06 to 08-14-06	(DRUGS)
$393.05	08-04-06 to 08-14-06	(DRUGS)
$73.50	08-04-06 to 08-14-06	(DRUGS)
$328.00	08-04-06 to 08-14-06	
$897.00	08-04-06 to 08-14-06	
$147.00	08-04-06 to 08-14-06	
$90.00	08-04-06 to 08-14-06	
$1,273.00	08-04-06 to 08-14-06	
$415.00	08-04-06 to 08-14-06	
$612.00	08-04-06 to 08-14-06	
$201.00	08-04-06 to 08-14-06	
$1,172.00	08-04-06 to 08-14-06	
$87.00	08-04-06 to 08-14-06	
$2,593.00	08-04-06 to 08-14-06	
$949.55	08-04-06 to 08-14-06	(POC65)
$5,336.00	08-04-06 to 08-14-06	(DRUGS)
$90.00	08-12-06	($102.97)

$150.00	08-14-06	($163.42)
$458.00	09-26-06	
$111.00	09-26-06	($159.64)
Charges	Date of Service	Fee Schedule Amount
$347.00	09-26-06	
Charges	Date of Service	Fee Schedule Amount
$35.00	11-06-06	
$4,769.80	11-21-06	
$3,407.00	11-21-06	
$1,438.00	12-05-06	
$57.00	12-12-06	($91.63)
$57.00	12-12-06	($91.63)
$607.60	01-03-07	
$434.00	01-03-07	
$40.00	02-23-07	
$128.00	02-23-07	
$594.00	02-23-07	
$466.00	02-23-07	
$130.00	09-07-07	(Meds)
$130.00	10-23-07	(Meds)
$130.00	12-18-07	(Meds)
$422.00	12-23-07	
$75.00	01-11-08	($57.00)
$75.00	01-24-08	($57.00)

$75.00	02-04-08	($57.00)
$75.00	02-15-08	($57.00)
$174.00	02-05-08	
$53.00	04-01-08	($40.28)
$110.41	04-01-08	

Charges	Date of Service	Fee Schedule Amount
$75.00	06-20-08	($57.00 POC76)
$75.00	07-04-08	($57.00 POC76)
$84.00	08-19-08	($63.84 POC76)
$416.00	09-10-08	($316.16 POC76)
$84.00	09-12-08	($63.84 POC76)
$84.00	10-08-08	($63.84 POC76)
$84.00	11-11-08	($63.84 POC76)
$84.00	03-17-09	($63.84 POC76)
$95.00	07-07-09	($77.96)
$1,507.00	07-07-09	($860.74)
$216.00	03-29-10	($162.97)
$89.00	04-19-10	($134.93)
$89.00	06-02-10	($134.93)
$97.00	09-21-10	($134.93)
$97.00	11-04-10	($134.93)
$268.00	01-03-11	($203.65)
$97.00	02-07-11	($136.29)

$97.00	03-02-11	($136.29)
$97.00	04-21-11	($136.29)
$97.00	04-25-11	($136.29)
$2,164.85	05-20-11	($1,476.72
$638.00	05-24-11	($291.07)
$244.00	05-24-11	($150.97)
$97.00	05-25-11	($136.29)
$97.00	05-31-11	($136.29)

Total $57,583.20

Cottage Emergency Physicians (Jackson Park Hospital) Medical Bills

Charges	Date of Service	Fee Schedule Amount
$535.00	07-29-06	($442.09)
$386.00	10-28-07	($283.39)

Total $725.48

Northwestern Medical Faculty Foundation Medical Bills

Charges	Date of Service	Fee Schedule Amount
$24.00	04-30-06	($24.00)
$228.00	04-30-06	($322.50)
$500.00	04-30-06	($474.84)
$6.00	05-01-06	($6.00)
$218.00	05-01-06	($172.87)
$194.00	05-01-06	($165.31)
$385.00	05-01-06	($330.62)

Total $1,401.64

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Jackson Park Hospital Medical Bills

Charges	Date of Service	Fee Schedule Amount
$1,247.00	11-08-05	($1,247.00)
$610.50	02-08-06	($301.61)
$901.00	07-20-06	($362.64)
$180.00	07-29-06	($259.96)
$12,840.00	07-29-06	
	07-31-06	($9,758.40)

Charges	Date of Service	Fee Schedule Amount
$500.00	07-30-06	($409.03)
$325.00	07-30-06	($200.26)
$4,021.30	10-28-07	($3,056.18)
$124.10	01-04-08	($124.10)
$137.00	01-04-08	($124.10)
$124.10	01-16/12	($124.10)
$153.00	01-17-08	($153.00)
$2,976.42	01-08-08	($2,262.07)
$308.00	12-14-08	($234.08)
$8,249.48	02-27-08	($6,269.60)
$831.00	01-27-09	($437.94)
$63.68	02-28-09	
$5,859.48 1	2-22-07 thru	
	12-26-07	($5,859.48)
$349.00	08/21/10	($265.24)

$415.00	08-21-10	($207.59)
$169.00	12-29-08	($82.89)
$169.00	02-10-09	($82.89)
$1,274.00	02-17-09 thru 02/27/09	($573.15)
$357.00	03/06/09	($242.32)
$332.00	08/23/09	($252.32)

Total $32,953.33

Friedell Clinic Medical Bills (treatment rendered at Jackson Park Hospital)

Charges	Date of Service	Fee Schedule Amount
$35.00	11-08-05	($35.00)
$224.00	02-07-06	($136.03)
$224.00	02-10-06	($136.03)
$224.00	04-14-06	($136.03)
$224.00	04-24-06	($136.03)
$224.00	05-15-06	($136.03)
$224.00	06-23-06	($136.03)
$224.00	07-03-06	($136.03)
$35.00	07-29-06	($53.84)
$70.00	07-30-06	($107.68)
$164.00	07-31-06	($165.31)
$422.00	12-23-07	($165.31)
$137.00	01-04-08	($143.98)

$124.10	01-04-08	($94.31 POC76)
$124.10	01-16-08	($94.31 POC76)

Total $1,747.14

Mercy Medical Bills

Charges	Date of Service	Fee Schedule Amount
$698.00	10-22-05	($698.00)
$1,497.86	11-07-05	($1,497.86)
$2,000.00	04-13-06	($1,520.00)
$1,600.00	09-16-09	($963.35)

Total $4,679.21

Mercy Physician Billing

Charges	Date of Service	Fee Schedule Amount
$34.00	04-14-06	($53.84)

Total $34.00

Foundation For Emergency Services Medical BillBademosi Adebayo, M. D.

Charges	Date of Service	Fee Schedule Amount
$208.00	05-22-08	($199.97)

Total $199.97

McHenry Laboratory Services

Charges	Date of Service	Fee Schedule Amount
$50.50	07-20-06	($125.59)
$75.00	07-29-06	($75.00)
$89.10	07-30-06	($53.50)

Total $179.00

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Provident Hospital

Charges	Date of Service	Fee Schedule Amount
$160.00	12-09-07	($160.00)

Total $160.00

Medco (Pharmacy)

Charges	Date of Service	Fee Schedule Amount
$222.18	06-02-07	($222.18 Meds)

Total $222.18

UIC Radiology

Charges	Date of Service	Fee Schedule Amount
$385.00	08-04-06	($456.07)
$195.00	11-21-06	($299.02)

Total $580.00

Walgreens

Charges	Date of Service	Fee Schedule Amount
$3,495.05	12-20-06 to Present	($3,495.05)

Total $3,495.05

South Shore Hospital

Charges	Date of Service	Fee Schedule Amount
$144.00	10-28-07	($144.00 Meds)
$38.00	10-28-07	($38.00 Meds)

$349.00	10-28-07	($265.24 ER)

Total $447.24

Park House Medical Center

Charges	Date of Service	Fee Schedule Amount
$3,190.32	03-05-08	($3,190.32 Amount paid by DHS)

Total $3,190.32

John J. Madden Mental Health Center Medical Bills

Charges	Date of Service	Fee Schedule Amount
$5,412.00	05-23-08 thru 06-03-08	($5,412.00 Amount Paid By DHS)

Total $5,412.00

John H. Stroger Hospital

Charge	Date of Service	Fee Schedule Amount
$611.40	12-21-07	($464.66 ER)
$110.00	12-21-07	($83.60 ER)

Total $548.26

Rush University Medical Center

Charge	Date of Service	Fee Schedule Amount
$689.50	06-05-08	($524.02 ER)

Total $524.02

Thresholds

Charge	Date of Service	Fee Schedule Amount

$695.40	12-22-07	($528.50 POC76)
$154.63	12-27-07	($117.51 POC76)
$22.09	12-28-07	($16.78 POC76)
$44.18	01-02-08	($33.57 POC76)
$278.16	02-27-08	($211.40 POC76)
$115.86	03-03-08	($88.05 POC76)
$19.31	03-05-08	($19.31 Meds)

Total $1,015.12

Ambulance Transportation Inc (Transport from Stroger to Thresholds)

Charge	Date of Service	Fee Schedule Amount
$169.00	12-22-07	(POC76 Charge $128.44)
$550.00	12-22-07	($367.70)
$109.14	05-23-08	(POC76 - $82.94)
$214.21	05-23-08	($374.94)

Total $793.29

Community Mental Health Billing

Charge	Date of Service	Fee Schedule Amount
	12-23-07	($107.86)
	12-24-07	($107.86)
	12-26-07	($107.86)
	12-27-07	($169.63)
	02-27-08	($249.96)
	02-28-08	($109.98)
	02-29-08	($109.98)

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	03-02-08	($109.98)
	03-03-08	($109.98)
	03-04-08	($109.98)
	03-05-08	($172.97)
$90.10	06-16-08	($68.47 - POC76)
$36.04	06-16-08	($27.39 - POC76)
$66.60	10-15-08	($50.61 - POC76)
$16.65	10-21-08	($12.65- POC76)

Total $1,625.16

Northern Illinois Clinical Lab - Vuckovic Gradimir

Charge	Date of Service	Fee Schedule Amount
$32.00	12-23-07	($32.35)
$46.00	01-08-08	($39.98)
$11.50	01-17-08	($86.04)
$20.50	02-27-08	($32.33)
$11.50	02-28-08	($58.99)
$11.50	02-29-08	($58.99)

Total $126.98

Advance Ambulance

Charge	Date of Service	Fee Schedule Amount
$72.00	03-05-08	($54.72 POC76)
$30.00	03-05-08	($22.80 POC76)

Total $77.52

Dr. V R Kuchipudi 3101 Maple Ave, Brookfield, IL 60513

Charge	Date of Service	Fee Schedule Amount
$195.00	03-10-08	($148.20 - POC76)
$100.00	03-21-08	($76.00 - POC76)

Total $224.20

NICL Laboratories Propath - Jackson Park Hospital

Charge	Date of Service	Fee Schedule Amount
$92.40	03-19-08	($87.73)
$95.50	03-19-08	($58.99)
$61.11	03-19-08	($64.84)
$37.30	03-19-08	($43.39)
$80.20	03-19-08	($107.99)
$87.72	03-19-08	($163.00)
$15.00	03-19-08	($9.28)

Total $422.33

Dr. John Tulley 1801 W Taylor St Ste 3C, Chicago, IL 60612.

Charge	Date of Service	Fee Schedule Amount
$44.71	04-01-08	($96.98)

Total $44.71

Dr. Donna Bergen, 1725 West Harrison Street Suite 1118, Chicago (Rush)

Charge	Date of Service	Fee Schedule Amount
$152.95	06-05-08	($301.95)

Total $152.95

Meeni Pharmacy

Charge	Date of Service	Fee Schedule Amount

$462.67		($462.67 Meds)

Total $462.67

Osco Drug Pharmacy

Charge	Date of Service	Fee Schedule Amount
$440.24		($440.24 Meds)

Total $440.24

Jacobs Health Care Systems

Charge	Date of Service	Fee Schedule Amount
$366.61		($366.61 Meds)

Total $366.61

Advocate Health and Hospital

Charge	Date of Service	Fee Schedule Amount
$450.00	06-29-06	($342.00)

Total $342.00

Rajiv Kandala MD - (Jackson Park ER)

Charge	Date of Service	Fee Schedule Amount
$600.00	07-29-06	($456.00)
$500.00	07-30-06	($380.00)
$450.00	07-31-06	($342.00)
$300.00	08-01-06	($228.00)

Total $1,406.00

Shahida Ahmad, MD. IMG 2315 E 93rd St Ste 320, Chicago, IL60617

Charge	Date of Service	Fee Schedule Amount

$125.00	06-29-06	($170.04)

Total $125.00

K. What temporary benefits are in dispute?

Petitioner is due temporary total disability benefits from 10-21-05 through 10-31-12, as provided in Section 8(b) of the Act.

L. What is the nature and extent of the injury?

Petitioner has not proven that he is permanently, totally disabled. Respondent shall pay Petitioner benefits of $591.77/week for 250 weeks as the injury has resulted in 50% of use of a man as a whole, as provided in Section 8(d)2 of the Act.

M. Should penalties or fees be imposed upon Respondent?

The purpose of penalties is to expedite the compensation of industrially injured workers and penalize employers who unreasonably, or in bad faith, delay or withhold compensation due employees. *See, Avon Products. Inc. v. Industrial Comm'n*, 82 Ill. 2d 297, 301, 412 N.E.2d 468 (1980). Penalties should not be imposed when an employer reasonably believed an employee was not entitled to compensation. It is not enough, however, to assert an honest belief that the employee's claim is invalid; the employer's belief is honest only if the facts, known to a reasonable person in the employer's position, would justify non-payment of compensation *See, Board of Education of the City of Chicago v. Industrial Comm'n*, 93 Ill. 2d 1, 9, 442 N.E.2d 861 (1982). Moreover, the burden is on the employer to show that its refusal to pay was objectively reasonable. *Miller v. Industrial Comm'n*, 255 Ill. App. 3d 974, 980, 627 N.E.2d 676 (1993). Whether the employer's conduct justifies the imposition of penalties is to be considered in terms of reasonableness. *See, Electro-Motive Division v. Workers' Compensation Commission*, 190 Ill. Dec. 276; 621 N.E. 2d 145 (Ill. App. 1st Dist. 1993). *See also, Clark v. Workers' Compensation Commission*, 218 Ill. App. 3d. 116, 116 Ill. Dec. 13, 578 N.E.

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2d 140 (1991), *McKay Plating Company v. Workers' Compensation Commission*, 91 Ill. App. 2d., 98, 62 Ill. Dec. 929, 437 N.E. 2d, 617, 623 (1982). Whether the employer has acted responsibly in refusing to pay benefits is to be decided on a case by case basis and is a question of fact. *See, Electro-Motive Division v. Workers' Compensation Commission, id.* Further, in determining whether delay in payment of workers' compensation has been unreasonable or vexatious so as to authorize imposition of a penalty, regard must be given to the circumstances attending the delay, nature of the case and the relief demanded; also to the question of whether the rights of the claimant have been prejudiced by that delay. *See, Board of Education of City of Chicago v. Workers' Compensation Commission*, 39 Ill. 2d 167, 233, N.E. 2d 362 (1968). Neither penalties nor attorneys' fees will be awarded in this matter.

N. Is Respondent due any credit?

Respondent is entitled to a credit of $20,281.99; $5,278.67 for medical payments, under Section 8 (a) of the Act; and $15,600.02 for union disability payments, under Section 8(j) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gayelynn Lohman,

Petitioner,

14IWCC0093

vs.

NO: 11 WC 42156

Caterpillar, Inc.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, permanent partial disability, temporary total disability, medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed February 19, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

14IWCC0093

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $14,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 1 0 2014

David L. Gore

Daniel R. Donohoo

Mario Basurto

DLG/gal
O: 1/23/14
45

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

14IWCC0093

LOHMAN, GAYELYNN
Employee/Petitioner

Case# 11WC042156

CATERPILLAR INC
Employer/Respondent

On 2/19/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0767 PETE SULLIVAN & ASSOC PC
LAURA L GRAY
124 S W ADAMS ST SUITE 340
PEORIA, IL 61602

2994 CATERPILLAR INC
MARK FLANNERY
100 N E ADAMS ST
PEORIA, IL 61629-4340

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION 14IWCC0093

GAYELYNN LOHMAN,
Employee/Petitioner

v.

CATERPILLAR, INC.,
Employer/Respondent

Case # 11 WC 42156

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Maureen H. Pulia**, Arbitrator of the Commission, in the city of **Peoria**, on **1/25/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

14IWCC0093

FINDINGS

On **9/8/11**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$31,282.90**; the average weekly wage was **$625.66**.

On the date of accident, Petitioner was **45** years of age, ***single*** with **no** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$00.00** for TTD, **$00.00** for TPD, **$00.00** for maintenance, and **$2,624.00** in non-occupational indemnity disability benefits, for a total credit of **$2,624.00**.

Respondent is entitled to a credit of **$00.00** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of $417.11/week for 16-5/7 weeks, commencing 9/8/11 through 1/22/12, as provided in Section 8(b) of the Act.

Respondent shall pay the unpaid bill of Dr. Kancius in the amount of $775.00as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of $375.40/week for 25.05 weeks, because the injuries sustained caused the **10% loss of the left foot and 5% loss of the right foot**, as provided in Section 8(e) of the Act.

RULES REGARDING APPEALS: Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

2/8/13
Date

ICArbDec p. 2

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 45-year-old parts specialists alleges she sustained an accidental injury to her bilateral feet due to repetitive work activities that arose out of and in the course of her employment with respondent and manifested itself on 9/8/11. Petitioner works in FPS Bay 19 in the Morton facility. She testified that she had worked in the Bay 19 area for almost 3 years prior to the alleged date of accident and wore steel toe shoes mandated by respondent. Her duties included taking parts out of damaged packaging and placing them in good packaging. Petitioner then carried the parts or pushed them down the conveyor belt about 20 to 25 feet, to the banding process area. She then would go to the computer to determine where the parts were to be distributed.

She testified that the floor underneath the packing area is primarily cedar blocks. As petitioner walked up and down along the conveyor belt she walked on cedar blocks. Petitioner's typical workday was eight hours, and she performed her packaging duties approximately 6 of the 8 hours. Petitioner testified that she also used a fork lift about two hours a day and spent the remainder of the day at her workstation. About 1 hour and 45 minutes of the time she spent at her workstation she was standing in front of the computer, processing information.

Petitioner testified that prior to 9/8/11 she worked in this job for 7 ½ years, in Morton and Mosville. Throughout this time petitioner testified that she walked on concrete and cedar block floors. Petitioner testified that the repackaged boxes she carried weighed up to 49 pounds, and any box that weighed more than 50 pounds had to be moved with a hoist. During the 2 to 3 years preceding the date of injury petitioner testified that the weight of the boxes she would move weighed on average between 20 and 40 pounds. Petitioner moved on average between 20 and 69 boxes a night depending on what material was in the packages.

Petitioner testified that in the area where she worked about 50% of the cedar blocks were uneven. She stated that one area where she would stumble, the cedar blocks were ¼ inch higher than the concrete. She also stated that some of the cedar blocks were recessed. Petitioner stated that the floor was not always level and the wood would swell if oils got into it.

On 9/8/11 as petitioner was processing the parts she felt extreme pain in the left heel of her left foot. Petitioner felt this pain while she was walking along the path of the conveyor on the uneven cedar blocks. She testified that she was limping. Petitioner reported her complaints to Paul Chetty, her immediate supervisor, before going to the doctor.

On 9/8/11 petitioner presented to Dr. Christine Kancius at Midwest Podiatry Group. Petitioner's chief complaint was pain in both of her heels. Petitioner described the condition as 6+ weeks sudden onset, with a sharp shooting quality and extreme severity. She reported that the pain was located at the plantar aspect of both

the left and right heel. The left heel was more painful than the right. She stated that her pain was made better with resting and soaking her feet. She further stated that her pain was worse upon rising in the morning and with weight-bearing. Petitioner reported that she noticed pain when she first got up in the morning and after standing up after periods of rest throughout the day. Petitioner denied any history of gout or rheumatoid arthritis. She also denied any history of a heel injury or trauma. Petitioner reported that her past medical history included foot and leg cramps. Petitioner was examined and her diagnosis was plantar fasciitis bilateral, and painful foot bilateral. Dr. Kancius injected the plantar aspect of the left heel at the level of the inferior calcaneal tubercle. A varus low dye rest strapping with longitudinal arch pad was applied to her left foot. Petitioner was counseled with regards to plantar fascia care. She was instructed to begin plantar fascia and gastrocsoleus stretching exercises for relief of her heel pain. She was also instructed to apply ice to the heel 15 to 20 minutes after stretching. Petitioner was restricted from weight-bearing without wearing shoes.

On 9/28/11 petitioner returned to Dr. Kancius. Petitioner reported that she had no improvement following the shot. Dr. Kancius suggested that petitioner wear an air cast for 4 to 6 weeks. She also authorized petitioner off work for a week to rest her foot and get used to the cast. Dr. Kancius's treatment recommendations remained the same. Petitioner remained restricted from weight-bearing without wearing shoes. She was also given a prescription for an air cast.

On 10/5/11 petitioner followed up with Dr. Kancius. Petitioner noted great improvement over the last several weeks while wearing the air cast. Dr. Kancius recommended that petitioner continue to wear the air cast for two more weeks. Thereafter she would consider weaning petitioner off the air cast.

On or about 10/7/11 petitioner completed an application for disability benefits. The form indicated that her injury occurred, or condition or sickness began on 08/01/11 and that she began missing work because of the sickness, injury or surgery on 09/28/11.

On 10/19/11 petitioner returned to Dr. Kancius. Petitioner again noted great improvement over last several weeks. Dr. Kancius recommended that petitioner continue to wear the air cast for two more weeks before beginning to wean her out of the cast. She also advised petitioner to make sure she bends her ankle daily.

On 11/2/11 petitioner returned to Dr. Kancius. She reported some discomfort in the heel. As a result, Dr. Kancius recommended that petitioner remain in the cast for two more weeks. On 11/16/11 Dr. Kancius recommended that petitioner gradually work herself out of the cast over the next two weeks and into a supportive tennis shoe. She recommended fabricating functional foot orthotics. Treatment consisted of biomechanical evaluation and plaster casting for functional foot orthotics. On 11/30/11 petitioner noted that she

had been unable to make a transition out of her cast and was still having pain in the foot. Since her orthotics were not yet ready Dr. Kancius told petitioner to continue with the air cast until the orthotics could be fitted. Dr. Kancius authorized petitioner off work for two more weeks.

On 12/12/11 petitioner followed up with Dr. Kancius. Petitioner was given orthotics with instructions to break them in slowly. Dr. Kancius told her that if she had any flareups she was to go back into her cast. Petitioner was authorized off work for three additional weeks in order to adjust to her orthotics. On 1/4/12 petitioner reported that she was still having some difficulty with her heel and getting used to her orthotics. Dr. Kancius told petitioner to gradually increase the time she stands in the orthotics. Petitioner was continued off work for an additional two weeks. On 1/16/12 petitioner reported that she was doing better with the orthotics. She indicated that she is going to increase her time wearing them in her work boots before she goes back to work on 1/23/12.

Petitioner testified that she returned to work on 1/23/12. When she returned to work petitioner noticed that respondent placed mats in various areas along the concrete and cedar blocks running along the conveyor belt in her work area. She also noted glue on some of the cedar blocks. Petitioner testified that these mats were not present before the alleged injury on 9/8/11.

On 2/1/12 petitioner noted that she was doing better with her left heel, but now she had mild plantar fasciitis of the right heel. She reported that she had been working for about two weeks and the pain was now located at the plantar aspect of the right heel. She stated that the pain is made better with resting her feet and worse with weight-bearing. Petitioner reported that she notices pain when first getting up in the morning and when standing up after periods of rest throughout the day. An examination revealed +3/10 pain on palpation of the plantar aspect of the left heel; no evidence of systemic inflammatory disease; no evidence of cellulitis; and no evidence of infection. There was +6/10 pain on palpation of the plantar aspect of the right heel. Dr. Kancius diagnosed plantar fasciitis of the left foot, plantar fasciitis of the right foot, and painful foot bilateral. Petitioner was prescribed Mobic and was told to continue with her orthotics.

On 4/26/12 Dr. Kancius drafted a letter to petitioner's attorney, Laura Gray. Dr. Kancius stated that petitioner had been a patient in her office since 9/8/11, and her initial complaint was pain in the bottom of her left foot. She also noted that petitioner told her that the right foot hurt, but not as bad. She noted that petitioner had reported that the pain had been going on for approximately 6 weeks. Dr. Kancius noted that after her initial exam she explained to petitioner that she had plantar fasciitis. Dr. Kancius noted that she treated it with an injection of celestone and lidocaine, padding and strapping of the foot, exercises, anti-inflammatories, rest and elevation when possible, and finally putting her in an air cast followed by custom orthotics. Dr. Kancius noted

that she authorized petitioner off work from 10/19/11 there 1/23/12, and that petitioner was improving when she last saw her on 2/1/12. Dr. Kancius was of the opinion plantar fasciitis is a very common problem. She could not say that petitioner's work environment caused her condition, but she was sure that it aggravated the problem. Without a specific injury, which petitioner denied, Dr. Kancius noted that there was no way to confirm what caused her plantar fasciitis.

On 6/27/12 petitioner underwent a section 12 examination performed by Dr. Ira Kornblatt at the request of the respondent. Petitioner reported spontaneous onset of bilateral, but mainly left-sided heel pain beginning approximately 8/1/11, when she complained of spontaneous onset of pain six weeks previously. She reported that she first noticed the pain when getting up in the morning and after standing up after periods of rest throughout the day. Petitioner stated that she was initially treated with a steroid injection to the left heel and stretching exercises. However due to ongoing symptomatology she was placed in a cast, supportive tennis shoes, and then orthotics in January 2012. She stated that on 1/23/12 she returned to her normal job activities after missing approximately 4 months of work. Petitioner reported that in February 2012 she complained of increased symptomatology regarding the right heel, for which he was given nonsteroidal anti-inflammatory medications. Petitioner denied previous problems with either foot and stated that she had been employed by Caterpillar for the past seven years. Her chief complaint was ongoing complaints of plantar foot pain, bilateral feet. She stated that she had just returned from a two-week vacation in Rome and had no pain in either foot while in Rome. However, upon returning to work the day before she developed recurrent pain in both her feet, which she claimed was due to her steel toed shoes and uneven factory floor. She stated that she continues to take a nonsteroidal anti-inflammatory medication on a daily basis.

An examination of the right hindfoot revealed complaints of pain over palpation of the plantar fascia and its insertion to the heel. Examination of the left heel revealed similar findings with some tenderness at the plantar fascial insertion. No local swelling of either foot was noted. X-rays were taken of petitioner's feet. They were negative for fracture, dislocation, or significant arthritis. Additionally, there was no evidence of a plantar spur of either foot. Dr. Kornblatt was of the opinion that petitioner had low grade plantar fasciitis of bilateral feet. He was further of the opinion that there was no history of trauma and no history of repetitive activity that would likely lead to plantar fasciitis. As such, he opined that petitioner's job activities were not likely a cause or an aggravation of the spontaneous onset of plantar fasciitis which the claimant developed. Dr. Kornblatt was of the opinion that petitioner had reached maximum medical improvement for her condition of plantar fasciitis. He did not believe petitioner had any further ongoing symptomatology due to her low grade plantar fasciitis, but noted that she continued to take nonsteroidal anti-inflammatory medications. Dr. Kornblatt was of the opinion

that petitioner needed these medications for symptomatic measures. He saw no evidence of any work related activity or problems that resulted in her present symptomatology.

The deposition of Dr. Kancius, a podiatrist, was taken on August 9, 2012 on behalf of the petitioner. Dr. Kancius testified that petitioner told her that at work she was standing a lot and moving on hard concrete surfaces. When asked if petitioner's full-time work duties of standing or walking on concrete floor, more likely than not, significantly aggravated her feet conditions, Dr. Kancius opined that if you have plantar fasciitis and you do work on hard surfaces and stand all day long it does keep the condition aggravated. Dr. Kancius further opined that petitioner's work duties of standing at work more likely than not aggravated her plantar fasciitis condition. Dr. Kancius' opinion in February 2012 was that petitioner's prognosis was guarded. At that time Dr. Kancius noted that petitioner had improvement with the left foot, but her right foot was beginning to hurt a little bit. Dr. Kancius found petitioner's complaints of pain to be consistent with her diagnosis.

Dr. Kancius was of the opinion that most steel toed shoes provide very poor arch support especially when you have a plantar fascial band problem already. She did not believe that steel toed shoes were very good supportive shoes. Dr. Kancius was of the opinion that the problems with steel toed shoes is that they are not usually manufactured with a great deal arch support , and they are also restricted as far as what can go inside the steel toed shoe. As such, it is difficult sometimes to get orthotics into these type shoes.

On cross examination Dr. Kancius opined that the recognized causes of plantar fasciitis include weight gain, choice of poor shoes, standing on hard surfaces, and pregnancy. Dr. Kancius did not know what type of shoes petitioner wore outside of work. She also had no understanding of petitioner's activities outside of work with respect to standing on hard surfaces. Dr. Kancius noted that petitioner was 150 pounds and stood about 5'3" tall. She further noted that petitioner provided no history of any specific injury or trauma. Dr. Kancius testified that other than standing for extended periods of time at work she was not aware of any other duties petitioner had that might aggravate the plantar fascial band. Dr. Kancius was of the opinion that by 10/19/11 she noted no symptoms in petitioner's plantar aspect of the right foot and was of the opinion that petitioner's plantar fascia symptoms had resolved on the right. Dr. Kancius was of the opinion that the fluctuation of petitioner's right foot pain back and forth was probably due to using the right foot a little bit more when the left foot was more aggravated. Dr. Kancius testified that she completed the physician's section of petitioner's application for disability benefits that was dated 10/7/11. She testified at that on page 2, question#5, in her opinion the petitioner's disability was not related to her work at Caterpillar. On redirect examination, Dr. Kancius testified that it was her understanding that at that time the petitioner was not claiming any acute injury with regard to her

right or left heel pain. Dr. Kancius opined that petitioner's bilateral foot problems were aggravated by her work duties, specifically standing on concrete and uneven surfaces.

On 10/3/12 the evidentiary deposition of Dr. Ira Kornblatt was taken on behalf of respondent. Dr. Kornblatt is an orthopedic surgeon specializing in sports medicine. Dr. Kornblatt was of the opinion that plantar fasciitis can come on spontaneously, especially in middle-aged women. He did not believe that petitioner reported any type of work activity that would have caused her plantar fasciitis. Dr. Kornblatt testified that if he had a patient with plantar fasciitis that fails conservative treatment he would send them to a podiatrist for further treatment. Dr. Kornblatt was of the opinion that some of the recognized causes of plantar fasciitis are spontaneous onset that is more common in men than women and tends to be in patients who are 40 to 60 years old; obesity; people who stand in one position over an extended period of time; people with repetitive stress from climbing or jumping; and runners. Dr. Kornblatt stated that he had never seen anything in writing that steel toed shoes result in an increased incidence of plantar fasciitis. He further stated that he has never seen in literature that walking on a factory floor where there are a few uneven surfaces can cause the development of plantar fasciitis. Dr. Kornblatt testified that he did not know what flooring surfaces petitioner was working out when she was packing parts.

Dustin Wagoner, Safety and Security Manager at the Morton Plant for the last five and half years, was called as a witness on behalf of respondent. Wagoner testified that his duties include programs related to the safety and health of employees. Wagoner went to petitioner's work area on 1/22/13 and took photos and reviewed the area. He had not been to petitioner's work area before this date. He did not believe petitioner's work area was different on the date of injury than it was on 1/22/13. He was not aware of the floor being raised or lowered. He further testified that anti-fatigue mats were placed in the area to ease the impact on the worker's body. Wagoner did not know how long the cedar blocks in petitioner's work area were there. He indicated that cedar blocks were used because petitioner's line handled the heaviest blocks and would crack the concrete.

Respondent offered into evidence petitioner's post offer questionnaire. In the questionnaire petitioner denied that she ever had any type of foot problem including plantar fasciitis.

Petitioner testified that currently she is unable to wear heels, high boots, or flip-flops. She claims that she must buy expensive shoes that can accommodate orthotics. She stated that she cannot walk for long distances. She also reported difficulty doing her workouts. Petitioner stated that she wears orthotics in her work boots. Petitioner is no longer able to hike for more than an hour and a half, and cannot walk on uneven terrain when hiking. At home, petitioner is unable to stretch upward to reach the cupboards. Petitioner denied any pain in her feet for 10 years prior to the accident. Petitioner testified that the pain in her feet is equal and varies depending

on what type of activities she is doing. She said her pain level can get up as high as 8/10 or on a good day be as low as 4/10. To relieve her pain petitioner takes Aleve, soaks her feet, and uses a foot spa. Petitioner can no longer walk in her bare feet.

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

Petitioner is alleging an accidental injury to his bilateral hands and arms due to repetitive work activities that arose out of and in the course of his employment by respondent and manifested itself on 2/17/11.

As a general rule, repetitive trauma cases are compensable as accidental injuries under the Illinois Worker's Compensation Act. In Peoria County Belwood Nursing Home v. Industrial Commission (1987) 115 111.2d 524, 106 Ill.Dec 235, 505 N.E.2d 1026, the Supreme Court held that "the purpose behind the Workers' Compensation Act is best serviced by allowing compensation in a case … where an injury has been shown to be caused by the performance of the claimant's job and has developed gradually over a period of time, without requiring complete dysfunction.." However, it is imperative that the claimant place into evidence specific and detailed information concerning the petitioner's work activities, including the frequency, duration, manner of performing, etc. It is also equally important that the medical experts have a detailed and accurate understanding of the petitioner's work activities.

Since petitioner is claiming an injury to her bilateral feet due to repetitive work activities, in Illinois, recovery under the Workers' Compensation Act is allowed, even though the injury is not traceable to a specific traumatic event, where the performance of the employee's work involves constant or repetitive activity that gradually causes deterioration of or injury to a body part, assuming it can be medically established that the origin of the injury was the repetitive stressful activity. In any particular case, there could be more than one date on which the injury "manifested itself". These dates could be based on one or more of the following, depending on the facts of the case:

1. The date the petitioner first seeks medical attention for the condition;
2. The date the petitioner is first informed by a physician that the condition is work related;
3. The date the petitioner is first unable to work as a result of the condition;
4. The date when the symptoms became more acute at work;
5. The date that the petitioner first noticed the symptoms of the condition.

In the case at bar the petitioner presented unrebutted evidence that she works on a packing line along a conveyor belt. Petitioner has been performing this job for the past 7 ½ years. Petitioner is required to wear steel-toed shoes and carry items or push items down the conveyor belt. For a minimum of 6 hours per day petitioner walks up and down the conveyor belt on cedar blocks and repackages boxes weighing between 20 and 40 pounds. She testified that she repackages between 20-69 boxes a shift, depending in the product. In addition to standing on her feet alongside the conveyor belt on the cedar blocks, petitioner also spends a portion of the remaining 2 hours standing at her computer entering information to determine where the packages are going. Petitioner works 40 hours a week, with 40 minutes for lunch and break per day.

Petitioner testified that the cedar blocks that made up the ground she stood on were not all even. She stated that approximately 50% of them were uneven, and in one area where the cedar blocks were ¼ inch higher than the adjoining concrete she would stumble at times. Petitioner stated that some of the cedar blocks were recessed and that some of them may be swollen if oil spilled and got absorbed into the block.

Petitioner testified that after she returned to work on 1/23/12 following her initial treatment she noticed that anti-fatigued mats had been placed over some of the cedar blocks and gaps between some of the cedar blocks had been filled in. Wagoner testified that these changes were made while petitioner was off. He had no pictures of what the area looked like before 9/8/11, only those taken right before trial. Petitioner testified that these photos did not accurately depict the area on 9/8/11.

Petitioner testified that when she presented to Dr. Kancius on 9/8/11 she described the onset of pain as 6 weeks ago, with the pain worsening since then. She described the pain as severe, sharp and shooting. She stated that it was worse upon rising in the morning and with weight bearing. Although petitioner had complaints prior to 9/8/11 and had mentioned it to her employer prior to that date, 9/8/11 was the date on which her condition became more acute at work and the date she first sought medical treatment for the condition.

Petitioner also testified that while off work she went on vacation to Rome and had no problems. However, after returning to work and resuming her work duties, she developed recurrent pain in both her feet.

Based on the above, the arbitrator finds the petitioner sustained an accidental injury to her bilateral feet due to her repetitive work activities that arose out of and in the course of her employment by respondent, and manifested itself on 9/8/11.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issue of accident and incorporates them herein by this reference.

Dr. Kancius and Dr. Kornblatt offered opinions on the issue of causal connection. Dr. Kancius noted that petitioner's initial complaint was with respect to the bottom of both her feet, left worse than right. Dr. Kancius diagnosed plantar fasciitis and treated it with an injection of celestone and lidocaine, padding and strapping of the foot, exercises, anti-inflammatories, rest and elevation when possible, and finally putting her in an air cast followed by custom orthotics. Dr. Kancius was of the opinion plantar fasciitis is a very common problem. Although she could not say that petitioner's work environment caused her condition, she was sure that petitioner's work duties aggravated the problem.

Dr. Kornblatt was of the opinion that petitioner had low grade plantar fasciitis of bilateral feet. He was further of the opinion that there was no history of trauma and no history of repetitive activity that would likely lead to plantar fasciitis. As such, he opined that petitioner's job activities were not likely a cause or an aggravation of the spontaneous onset of plantar fasciitis which the claimant developed. Dr. Kornblatt saw no evidence of any work related activity or problems that resulted in her present symptomatology.

In her deposition Dr. Kancius, a podiatrist, noted that petitioner told her that at work she was standing a lot and moving on hard concrete surfaces. When asked if petitioner's full-time work duties of standing or walking on concrete floor, more likely than not, significantly aggravated her feet conditions Dr. Kancius opined that if you have plantar fasciitis and you do work on hard surfaces and stand all day long it does keep the condition aggravated. Dr. Kancius opined that petitioner's work duties of standing at work more likely than not aggravated her plantar fasciitis condition. Dr. Kancius was of the opinion that most steel toed shoes provide very poor arch support especially when you have a plantar fascial band problem already. She did not believe that steel toed shoes were very good supportive shoes. Dr. Kancius was of the opinion that the problems with steel toed shoes is that they are not usually manufactured with a great deal arch support , and they are also restricted as far as what can go inside the steel toed shoe. As such, it is difficult sometimes to get orthotics into these type shoes.

Although Dr. Kancius was of the opinion that the recognized causes of plantar fasciitis include weight gain, choice of poor shoes, standing on hard surfaces, and pregnancy, she opined that petitioner's bilateral foot problems were aggravated by her work duties, specifically standing on concrete and uneven surfaces.

Alternative, Dr. Ira Kornblatt, an orthopedic surgeon specializing in sports medicine was of the opinion that plantar fasciitis can come on spontaneously, especially in middle-aged women. He did not believe that petitioner reported any type of work activity that would have caused her plantar fasciitis. Dr. Kornblatt testified that if he had a patient with plantar fasciitis that fails conservative treatment he would send them to a podiatrist for further treatment. Dr. Kornblatt also noted that some of the recognized causes of plantar fasciitis are

spontaneous onset that is more common in men than women and tends to be in patients who are 40 to 60 years old; obesity; people who stand in one position over an extended period of time; people with repetitive stress from climbing or jumping; and runners. Dr. Kornblatt stated that he had never seen anything in writing that steel toed shoes result in an increased incidence of plantar fasciitis. He further stated that he has never seen in literature that walking on a factory floor where there are a few uneven surfaces can cause the development of plantar fasciitis. The arbitrator finds it significant that Dr. Kornblatt did not know what flooring surfaces petitioner was working out when she was packing parts.

Based on the above, as well as the credible evidence, that arbitrator finds the opinions of Dr. Kancius more credible than those of Dr. Kornblatt. The arbitrator finds it significant that Dr. Kancius knew petitioner's job duties and what surface she worked on. Alternatively, Dr. Kornblatt admitted that he did not know the flooring surface that petitioner worked on. Additionally, he admitted that if he had a patient with plantar fasciitis that fails conservative treatment he would send them to a podiatrist for further treatment. Based on these findings the arbitrator finds Dr. Kancius, a podiatrist, had a more complete description of petitioner's work duties, and as a podiatrist, had a better understanding of what activities cause, or aggravate plantar fasciitis.

The arbitrator adopts the opinions of Dr. Kancius over those of Dr. Kornblatt, and finds the petitioner has proven by a preponderance of the credible evidence that her bilateral feet conditions are causally related to the repetitive work activities she does for respondent.

J. WERE THE MEDICAL SERVICES THAT WERE PROVIDED TO PETITIONER REASONABLE AND NECESSARY? HAS RESPONDENT PAID ALL APPROPRIATE CHARGES FOR ALL REASONABLE AND NECESSARY MEDICAL SERVICES?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issues of accident and causal connection and incorporates them herein by this reference.

Petitioner is claiming that respondent is liable for an unpaid bill in the amount of $775.00 for treatment rendered by Dr. Kancius. The arbitrator finds the respondent shall pay the unpaid bill from Dr. Kancius in the amount of $775.00 pursuant to Sections 8(a) and 8.2 of the Act.

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issues of accident and causal connection and incorporates them herein by this reference.

Petitioner is alleging that she was temporarily totally disabled from 9/28/11 to 1/23/12. On 9/28/11 petitioner presented to Dr. Kancius. Dr. Kancius restricted petitioner from weight-bearing without wearing shoes, and issued a prescription for an air cast for her to wear. Respondent could not accommodate these

restrictions. On 11/16/11 Dr. Kancius instructed petitioner to gradually work herself out of the cast over the next two week and into a supportive tennis shoe. Again, respondent could not accommodate this restriction. Over the next month petitioner was fitted with orthotics. On 1/16/12 she reported that she was doing better with the orthotics, She also indicated that she was going to increase her time wearing them in her work boots before she went back to work on 1/23/12.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner was temporarily totally disabled from 9/28/11-1/22/12, a period of 16-5/7 weeks. The arbitrator finds the respondent is entitled to a credit for the non-occupational indemnity disability benefits paid in the amount of $2,624.00.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

The Arbitrator adopts her findings of fact and conclusions of law contained above with respect to the issues of accident and causal connection and incorporates them herein by this reference.

As a result of this injury petitioner underwent conservative treatment for both her feet that included an injection of celestone and lidocaine, padding and strapping of the foot, exercises, anti-inflammatories, rest and elevation when possible, air cast and custom orthotics for her left foot and exercises, anti-inflammatories, rest and elevation for the right foot.

Petitioner was released to her full duty job on 1/23/12. She testified that currently she is unable to wear heels, high boots, or flip-flops. She claims that she must buy expensive shoes that can accommodate orthotics. She stated that she cannot walk for long distances. She also reported difficulty doing her workouts. Petitioner stated that she wears orthotics in her work boots. Petitioner is no longer able to hike for more than an hour and a half, and cannot walk on uneven terrain when hiking. At home, petitioner is unable to stretch upward to reach the cupboards. Petitioner denied any pain in her feet for 10 years prior to the accident. Petitioner testified that the pain in her feet is equal and varies depending on what type of activities she is doing. She said her pain level can get up as high as 8/10 or on a good day be as low as 4/10. To relieve her pain petitioner takes Aleve, soaks her feet, and uses a foot spot. Petitioner can no longer walk in her bare feet. Despite these subjective complaints petitioner has not sought any further medical treatment.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner sustained a 5% loss of use of the right foot, and 10% loss of use of the left foot pursuant to Section 8(e) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify AWW	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Steve Devaney,

Petitioner,

14IWCC0094

vs.

NO: 12 WC 23465

Worldwide Music Services, LLC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner/Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, average weekly wage/benefits rates, temporary total disability, employment termination, and penalties & attorney fees and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

- Petitioner was a 59 year old employee of Respondent, who described his job as managing director since September 2010 (for 1-3/4 years). Petitioner's immediate supervisor was F. Hayden Connor. Respondent was in the business of sheet music distribution and they did not have an Internet e-commerce presence. Petitioner testified that he was brought in to help manage Respondent and the two other companies in the same building. Petitioner

testified he had an employment agreement with Respondent which at some point was reduced to writing. Petitioner testified that they had exchanged a series of e-mails regarding the employment contract. Petitioner viewed PX 6 and identified it as a draft contract between Petitioner and Respondent that was finalized. Petitioner testified that the contract stated (Petitioner read from the terms of the contract) that 'your remuneration will start at $30,000 paid (PA) on September 15, 2010 with another $30,000 held in abeyance until it can be afforded from cash flow, and will be paid retroactively.' Petitioner testified that at some point the agreement was printed out and presented for his signature. Petitioner stated that he signed a final version of that agreement and gave it to Mr. Connor; that was the last time he saw it. Petitioner testified that the noted paragraph was contained in the final version he signed. Petitioner testified that he understood that his annual salary was $60,000 and that the $30,000 per year under the agreement was deferred compensation that was part of his regular earnings. Petitioner testified that his understanding was that his 2011 and 2012 salary was $60,000; split between $30,000 currently paid and $30,000 as deferred compensation. Petitioner testified it was Mr. Connor's idea to defer part of the compensation as Mr. Connor had approached Petitioner with the idea. Petitioner testified that Mr. Connor asked him to do that because at the time Respondent was moving or required to move out of the facility they were in and was short of cash. Petitioner helped Respondent move out and it was always his understanding that his earning for 2011 and 2012 was $60,000. Petitioner testified the $60,000 per year salary was exclusive, separate and apart from any sort of bonus or performance incentive.

- On the date of accident, June 21, 2012, Petitioner testified he was working that day and physically feeling fine; he had no problems with his left shoulder or arm at all. Petitioner had a prior left arm fracture when he was 12 years old but from then until June 21, 2012 he had no problems with his left arm. Petitioner testified that on that day they were moving boxes at Respondent as they were told by Mr. Connor. Petitioner understood the work he was doing was for the benefit of Respondent. Mr. Connor owned the building where Respondent was located. Petitioner testified that the building Mr. Connor took over was sold as is and was in deplorable condition. Petitioner testified that on June 21, 2012 when he was moving boxes he slipped on some stairs and fell. Petitioner stated that it was wet outside and the stairs may have been wet from workers moving the boxes in and out from the wet. Petitioner stated he was collecting boxes from the doorway in. Petitioner stated that as he was delivering boxes to someone (Jeff Hansel) at the top of the stairs and he slipped and immediately fell on his elbow which jammed into his shoulder and neck. Petitioner testified that he didn't have time to extend his arm to catch himself. Petitioner stated immediately after the fall he had severe pain. Petitioner reported to Northwestern Memorial Hospital ER the same day of the accident and testified he reported headache, left shoulder, left clavicle, and left arm pain. Petitioner stated that his pain got worse with movement and he had swelling in his left hand as well. Petitioner is left hand dominant. Petitioner had an x-ray at the ER which revealed a non-displaced

fracture at his left elbow. Petitioner had an x-ray of his left forearm that day which confirmed a radial head fracture in his left arm. Petitioner testified that the ER doctor recommended that he follow up with an orthopedic surgeon and he was placed in a sling. Petitioner reported the injury to Mr. Connor at Respondent. Petitioner stated Mr. Connor said not to worry as Respondent had WC insurance.

- Petitioner was seen by Dr. Merk, an orthopedic surgeon, at Northwestern on June 26, 2012. Petitioner testified he reported to the doctor that he had pain in his elbow and radiating down into his forearm. Petitioner stated the pain was from his neck down to his hand. Petitioner understood the doctor diagnosed a displaced fracture in the radial head. The doctor gave Petitioner a restriction of no lifting more than 3-5 pounds and told him to follow up in 4 weeks. Petitioner stated that he attempted to return to work on June 28, 2012 with the restriction but was unable to perform his functions. Petitioner testified that he did not report to work on June 29, 2012 because of the problems he had the prior day. Petitioner testified at that time Respondent was unable to accommodate his 3-5 pound restriction. Petitioner had contacted Dr. Merk's office June 28, 2012 regarding his attempt at returning to work and the problems with his dominant arm. Petitioner stated that the doctor recommended he stay off work. Petitioner testified that Mr. Connor was aware that Petitioner had tried to work and was unable to do so. Petitioner stated that he spoke to Mr. Connor in the office on June 28 at about 1:00pm. Petitioner stated he told Mr. Connor that since Petitioner was left handed, any functions he normally performed were impossible and Mr. Connor told Petitioner to go home. Petitioner testified at some point after June 28 he received his first TTD check for $549.45 and he understood that to be for the period of June 22-June 26, 2012. He received a second check for $769.23 for June 29-July 5, 2012. He received a third check for $659.34 for July 6-July 11, 2012. Petitioner testified that at some point after the accident and prior to July 8, 2012 he spoke to Mr. Connor regarding the wage reported to the insurance company. Petitioner testified that he had reported his wage to the insurance company as $60,000/year. Petitioner stated Mr. Connor said he had also spoken to the insurance company the same day as Petitioner; the conversation took place in the office with no one else present at about 1:00p.m. Petitioner stated Mr. Connor said he had confirmed what Petitioner told the insurance company regarding wages ($60,000/year).

- Petitioner returned to Dr. Merk on July 11, 2012. At that time Petitioner stated that he had numbness in his left little and ring fingers and reported difficulty writing because of the lack of control of his left hand. The doctor recommended starting occupational therapy and to follow up in 4 weeks. Petitioner did not begin the therapy at that time. Petitioner filed his Application for Adjustment of Claim on July 9, 2012. Sometime after July 18, 2012 he received a fourth TTD check for $769.23 for July 12-July 18, 2012. Petitioner stated that he had another conversation with Mr. Connor (about retaining an attorney and filing the WC claim); however, he did not recall the date of that phone

conversation. Petitioner testified about August 2, 2012 he was informed his TTD benefits would be reduced to $253.00 per week because of the information Mr. Connor provided to the WC insurance adjuster; Petitioner testified Mr. Connor provided that information to the adjuster after Petitioner retained an attorney. Petitioner testified in his conversation with Mr. Connor, Mr. Connor had stridently suggested that Petitioner not hire an attorney as it would impact him financially and that Petitioner should not do it. Petitioner stated that he did not learn of the TTD reduction until he received that check. At some point Petitioner had a conversation with Mr. Connor regarding the reduction; he did not recall the date but it was shortly after receiving that check. The conversation took place over the phone. Petitioner stated he asked what caused the reduction and Mr. Connor said he called the insurance company. Petitioner testified that Mr. Connor told him that he was going to lose financially and that he needed to reduce the amount Petitioner was getting paid. Mr. Connor said he sent the W-2's to the adjuster. Petitioner testified he had 2-3 phone conversations with Mr. Connor regarding retaining an attorney around the time he received the first TTD check, and from there on they communicated via e-mail. Petitioner testified he had a phone conversation with Mr. Connor regarding filing a WC claim but he did not recall when that happened but it was before his benefits were reduced. Petitioner stated Mr. Connor told him not to seek legal counsel or they would come after Respondent and he would lose money.

- Petitioner returned to Dr. Merk on August 8, 2012. Petitioner stated then the pain had not improved and that he was realizing more numbness in the 4th and 5th fingers in his left hand. Petitioner testified he then noted a shaking sensation when he attempted to use his left arm. Petitioner stated that the doctor gave him restrictions of no lifting over 5 pounds and to avoid repetitive activity with the left arm. Petitioner stated that the doctor also recommended physical therapy and to see a neurologist. Petitioner indicated Dr. Merk's treatment as an orthopedic surgeon was restricted to skeletal and the fracture itself and that Petitioner should get looked at by a neurologist regarding the reduction in movement, shaking and numbness. Petitioner stated that Dr. Merk referred him to Dr. Shepard regarding those issues. Dr. Merk did not release Petitioner to full duty work at that time and did not indicate that he was lifting Petitioner's restrictions. Petitioner testified that Respondent did not have light duty available for him at that time. Petitioner testified that on August 8, 2012 he was terminated by Respondent. Petitioner testified Mr. Connor, via e-mail, told Petitioner that he was upset and since Petitioner was not coming in that he should return the key to the building. Petitioner testified Mr. Connor did not explain why Petitioner was fired. Petitioner identified PX10 as a copy of the e-mail he received from Mr. Connor August 9, 2012 indicating that he wanted the key back. Petitioner viewed PX11 and identified it as an e-mail from August 1, 2012 regarding a phone message and about Petitioner not being allowed in the building without permission which Petitioner did not have from Respondent. Petitioner viewed PX12 indicating that Petitioner had picked up some personal things from Respondent and that if Petitioner did not pick up any other personal items Respondent would deem them as abandoned.

- Petitioner reported to Dr. Shepard on August 10, 2012 and advised the doctor about the numbness and tingling in Petitioner's hand since the fall. Dr Shepard diagnosed radiculitis and neuralgia and recommended an EMG (done 8/17/12) and MRI (done 8/27/12). Petitioner indicated that the EMG revealed a peripheral neuropathy and the MRI still showed the non-displaced fracture of the elbow with some edema/swelling. Petitioner stated that he followed up with Dr. Shepard on September 7, 2012 and P reported that he could not put his arm on anything hard due to the pain and that he was still having the tremors in his left arm. He was again diagnosed with peripheral neuropathy. Petitioner stated that the doctor wanted to continue seeing him every three months. Petitioner indicated on September 10, 2012 he became aware that Respondent had terminated his benefits due to the reason that Petitioner was self-employed and running his own business separate and aside from Respondent. Petitioner stated he had his own website business that had begun January 2012 which was located in his home. Petitioner indicated that Mr. Connor had been aware that he had started that business. Petitioner stated Mr. Connor had been sent an e-mail from Phil Smith, the vice president of sales for Respondent, about it in February; Petitioner had been copied on that e-mail. The e-mail indicated that Mr. Smith was curious as to who Music Professional Organization was (Petitioner's business). Petitioner testified it was communicated to them that the website was Petitioner's (business). Petitioner testified he had many subsequent conversations with them about that business (the first at the time of that e-mail). Petitioner had the conversation with Mr. Connor in the office with no one else present. Petitioner testified that he had explained what he was doing; collecting music professionals globally. Petitioner stated that Mr. Connor did not tell him anything. Petitioner testified that Mr. Connor was aware, in February 2012, that he was and doing his own business simultaneously while working at Respondent. Petitioner testified that Music Professionals Organization has four parts to it; music professionals, sheet music, instruments, and products and services. Petitioner stated that he gathered information about music professionals and how they relate and interrelate with the four items. He stated Music Professionals was a promotional services organization. If any instrument manufacturer wanted to promote their instrument to music professionals to use, Petitioner's company would be the conduit for that. Petitioner stated that Respondent sold sheet music to dealers and the only relationship they had in common was in the music industry. Petitioner did not consider his business in competition with Respondent.

- At hearing November 21, 2013, Petitioner agreed there had been prior testimony regarding benefits being terminated around September 2012. Petitioner testified Mr. Connor at no time expressed objection to Petitioner having his own business and working at Respondent. Petitioner testified at no time did he ever voluntarily resign from Respondent after his injury and at no time did he agree to work as an independent contractor for Respondent or for Mr. Connor after the injury. Petitioner testified that

Music Professional Organization has a website that appeared January 2012 and as of July he made it available to collect money for Alzheimer's research by donating money from the sale of pearls on the website to the Alzheimer Association.

- Petitioner returned to Dr. Merk, on September 11, 2012 and reported continuing numbness and tingling in his left hand. Petitioner testified Dr. Merk never gave him a full duty work release nor lifted Petitioner's restrictions regarding no repetitive motion of the arm or 3 to 5 pound lifting limitations. The doctor instructed Petitioner to continue therapy. Petitioner stated that he continued therapy up to the date of hearing. Petitioner testified that at no time did Respondent provide him with a job within the restrictions. Prior to the accident, Petitioner testified he never had any medical problems with his left arm or hand and he had not experienced numbness or tingling in his left arm or hand.

- Petitioner testified there are things that now cause him pain that he did not have before; like writing, typing, lifting. Petitioner testified that when he writes, his hand shakes uncontrollably. He indicated he loses strength and grip. Petitioner testified when he tries to lay his elbow on hard surfaces he gets severe pain in his elbow. Petitioner testified that activities of daily living causes him pain and he has difficulty sleeping because of pain that wakes him 3-4 times per night.

The Commission finds that on the date of accident, June 21, 2012, Petitioner testified he was working that day and physically feeling fine; he had no problems with his left shoulder or arm at all. Petitioner had a prior left arm fracture when he was 12 years old but from then until June 21, 2012 he had no problems with his left arm. Petitioner testified that on that day they were moving boxes at Respondent as they were told by Mr. Connor. Petitioner understood the work he was doing was for the benefit of Respondent. Mr. Connor owned the building where Respondent was located. Petitioner testified that the building Mr. Connor took over was sold as is and was in deplorable condition. Petitioner testified that on June 21, 2012 when he was moving boxes he slipped on some stairs and fell. Petitioner stated that it was wet outside and the stairs may have been wet from workers moving the boxes in and out from the wet. Petitioner stated he was collecting boxes from the doorway in. Petitioner stated that as he was delivering boxes to someone (Jeff Hansel) at the top of the stairs and he slipped and immediately fell on his elbow which jammed into his shoulder and neck. Petitioner testified that he didn't have time to extend his arm to catch himself. Petitioner stated immediately after the fall he had severe pain. Petitioner reported to Northwestern Memorial Hospital ER the same day of the accident and testified he reported headache, left shoulder, left clavicle, and left arm pain. Petitioner stated that his pain got worse with movement and he had swelling in his left hand as well. Petitioner is left hand dominant. Petitioner had an x-ray at the ER which revealed a non-displaced fracture at his left elbow. Petitioner had an x-ray of his left forearm that day which confirmed a radial head fracture in his left arm. Petitioner testified that the ER doctor recommended that he follow up

with an orthopedic surgeon and he was placed in a sling. Petitioner reported the injury to Mr. Connor at Respondent. Petitioner stated Mr. Connor said not to worry as Respondent had WC insurance. Petitioner reported to Dr. Merk, an orthopedic surgeon, at Northwestern June 26, 2012. Petitioner testified he reported to the doctor that he had pain in his elbow and radiating down into his forearm. Petitioner stated the pain was from his neck down to his hand. Petitioner understood the doctor diagnosed a displaced fracture in the radial head. The doctor gave Petitioner a restriction of no lifting more than 3-5 pounds and told him to follow up in 4 weeks. Petitioner stated that he attempted to return to work on June 28, 2012 with the restriction but was unable to perform his functions. Petitioner testified that he did not report to work on June 29, 2012 because of the problems he had the prior day. Petitioner testified at that time Respondent was unable to accommodate his 3-5 pound restriction. Petitioner had contacted Dr. Merk's office June 28, 2012 regarding his attempt at returning to work and the problems with his dominant arm. Petitioner stated that the doctor recommended he stay off work. Petitioner testified that Mr. Connor was aware that Petitioner had tried to work and was unable to do so. Petitioner stated that he spoke to Mr. Connor in the office on June 28 at about 1:00pm. Petitioner stated he told Mr. Connor that since Petitioner was left handed, any functions he normally performed were impossible and Mr. Connor told Petitioner to go home.

The medical records contradict Petitioner's testimony in regard to shoulder/neck causal connection. The medical records clearly show that Petitioner specifically denied neck pain in the ER as well as in other medical records. While there is indication of numbness and tingling of his left little and ring finger, there is also indication of similar numbness in his toes in his left leg which also clearly would not be related. Further, Petitioner filed the Application for Adjustment of Claim only claiming injury to his left arm with no indication of a left shoulder or neck injury. There is clear evidence of a causal connection to Petitioner's condition of ill-being regarding his left arm with the documented radial neck fracture. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence and herein, affirms and adopts the Arbitrator's finding as to causal connection, regarding only the left arm.

The Commission finds the Arbitrator calculated the Average weekly wage (AWW) based upon a salary of $30,000 with $30,000 held in 'abeyance' pending payment from cash flow with profit. The Commission finds from the evidence presented that the additional $30,000 was deferred income. Accordingly, the average weekly wage should have been calculated with the base annual salary of $60,000 for an AWW of $1,153.85; temporary total disability (TTD) rate of $769.22, and permanent partial disability (PPD) rate of $692.31. The Commission finds the decision of the Arbitrator as contrary to the weight of the evidence, and herein, modifies the AWW to be $1,153.85.

The Commission finds the evidence and testimony clearly supports the duration of lost time here. Petitioner was clearly discharged by Dr. Merk to only return as needed as of September 11, 2012. Dr. Merk did not impose any permanent restrictions on Petitioner. While petitioner may

have seen Dr. Shepard after that point, at no time did Dr. Shepard impose any sort of restrictions on Petitioner. Petitioner was apparently capable of returning to full duty after Dr. Merk's release so no further TTD would be due beyond that point. The TTD rate, however, as noted above was in error. Based upon the correct AWW, the TTD benefit rate is, herein, modified to **$769.22 per week** for the awarded TTD period.

The Commission finds that there are clear issues that Respondent had to terminate TTD benefits. Regardless of the issue of termination, Respondent paid TTD, albeit based on the lower AWW and also advanced PPD. Petitioner failed to prove that Respondent acted in an unreasonable and vexatious manner to warrant entitlement to any penalties and attorney fees. The Commission finds the decision of the Arbitrator as not contrary to the weight of the evidence and, herein, affirms and adopts the Arbitrator's finding denying penalties and attorney fees.

IT IS THEREFORE ORDERED BY THE COMMISSION that Petitioner's Average Weekly Wage is $1,153.85.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $769.22 per week for a period of 11-5/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

14IWCC0094

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $4,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 10 2014
O: 12/12/13
DLG/jsf
45

David L. Gore

Michael P. Latz

Mario Basurto

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0094

DEVANEY, STEVE
Employee/Petitioner

Case# **12WC023465**

WORLDWIDE MUSIC SERVICES LLC
Employer/Respondent

On 6/4/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0391 THE HEALY LAW FIRM
PATRICK ANDERSON
111 W WASHINGTON ST SUITE 1425
CHICAGO, IL 60602

2837 LAW OFFICES OF THADDEUS GUSTAFSON
ROBERT SABETTO
2 N LASALLE ST SUITE 2510
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION 19(b)

14IWCC0094

STEVE DEVANEY
Employee/Petitioner

v.

WORLDWIDE MUSIC SERVICES, LLC
Employer/Respondent

Case # 12 WC 23465

Consolidated cases: ___

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brian Cronin**, Arbitrator of the Commission, in the city of **Chicago**, on **November 14 and 21, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☒ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS 14IWCC0094

On the date of accident, **June 21, 2012**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being to his left arm only is causally related to the accident.

In the year preceding the injury, Petitioner earned **$19,817.20**; the average weekly wage was **$388.57**.

On the date of accident, Petitioner was **59** years of age, ***married*** with **0** dependent children.

Respondent *has* paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$4,518.25** for TTD, **$0** for TPD, **$0** for maintenance, **$1,012.00** for PPD (advance), and **$5,422.51** for other (medical) benefits, for a total credit of **$10,952.76**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Petitioner is entitled to **11-5/7** weeks of TTD benefits from **June 22, 2012** through **September 11, 2012** at a weekly rate of **$253.00** for a total of **$2,963.72**.

Petitioner's request for penalties and attorneys' fees is denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

June 3, 2013
Date

ICArbDec19(b)

JUN - 4 2013

ARBITRATION DECISION

I. Findings of Fact.

Petitioner testified that Respondent's owner, Hayden Connor, hired him as its managing director in September 2010. According to Petitioner, he was hired to manage Worldwide Music Services and two other companies located in the same building. Connor owned all three companies. Petitioner and Connor exchanged emails and ultimately reduced to writing an employment contract that Petitioner signed. Petitioner did not have a copy of the contract, but he testified that it contained terms similar to those in an email dated September 28, 2010. *PX6, RX5*. This email, which indicates that it is a "rough draft" to "review and fine tune," states as follows:

> "2. Your remuneration will start at $30,000 p[er] a[nnum] on September 15, 2010 with another $30,000 held in abeyance until it can be afforded from cash flow, and will be paid retroactively. These [sic] money must come from actual cash profits as opposed to book profits which include depreciation and good will." *PX6, RX5*.

Petitioner testified that he understood his annual salary to be $60,000, which consisted of $30,000 in regular earnings and $30,000 in what he called "deferred compensation." This "deferred compensation" was not a bonus or an incentive. Petitioner testified on direct exam that he earned $60,000 in 2010 and 2011. On cross exam, he was shown his W2s for 2010 and 2011 (*RX16*), which showed earnings of $8,427.12 and $25,012.00, respectively. Petitioner admitted that the W2s were accurate.

Connor agreed that he and Petitioner had reduced to writing an employment contract. He testified that Petitioner never returned such contract to him signed. Connor also agreed that Petitioner was eligible to receive an additional $30,000 under the employment contract. However, this additional amount was conditional on actual cash profits at the end of the year. It was not based on performance, and it was not triggered by any benchmarks. This additional amount was never paid because the company did not have enough cash profits in either 2010 or 2011.

Connor responded to a records subpoena issued by Counsel for Petitioner. *PX5, RX4.* Contained in the response is a wage statement form showing Petitioner's earnings from June 27, 2011 through June 21, 2012. *PX5, RX2, RX4.* The wage statement shows a wage reduction from $14.43/hour to $9.62/hour starting on July 4, 2011. Connor admitted that he did not complete the wage statement, but testified that his accountant or her assistant did. Also contained in the response is a typewritten September 20, 2010 fax transmission memo showing Petitioner's wage rate as "$14.43 (hr.)." *PX5, RX2.* Next to this is a handwritten notation "REDUCED 7/4/2011 to 9.62 (hr.)".

Petitioner admitted that his salary was reduced in July 2011. According to him, Connor promised to return him to the amount he was earning before the reduction at some undetermined point in the future. Connor testified that the reduction was company-wide, and he admitted that he intended to return all of his employees to what they were making when the company could afford it.

Petitioner testified that he slipped and fell on the stairs outside the doorway while helping a co-worker, Jeff Hansel, move boxes into Respondent's building on June 21, 2012. It was wet outside, and water had been tracked onto the stairs. Petitioner landed on his left elbow and, according to him, jammed it into his neck. Although Petitioner testified that the building was in "deplorable" condition, he admitted on cross exam that nothing was wrong with the stairs.

Petitioner noticed severe pain and sought medical attention. That same day, Petitioner reported to the Northwestern Memorial Hospital Emergency Room with complaints of headache, left clavicle pain, left shoulder pain, and left arm pain after falling at work when he was moving boxes on stairs. *PX2.* He denied neck pain. His pain was increased with movement and Petitioner had pain radiating down into his forearm with tingling of his third and fourth fingers, as well as swelling of his first finger. An x-ray revealed: (1) The distal humerus fat pads are displaced from a traumatic joint effusion. (2) A subtle nondisplaced fracture seen at the base of the radial head. Petitioner's left arm was placed in a sling and he was advised to follow up with an orthopedic surgeon. *PX2.*

On June 26, 2012, Petitioner saw Bradley Merk, M.D., an orthopedic surgeon. *PX1.* Dr. Merk noted that x-rays of Petitioner's clavicle, humerus, elbow, forearm and wrist were taken. After reviewing such x-rays, Dr. Merk opined: "The only abnormality is very subtle, cortical disc irregularity of the anterior aspect of the

radial head neck junction with associated fat pads." Dr. Merk noted that his pain seems to be improving and that Petitioner does not note any neurologic symptoms. Petitioner noted some pain mostly over the elbow radiating into the forearm predominantly with rotational motion. Dr. Merk diagnosed Petitioner with a minimally displaced radial head fracture, recommended progressive range of motion and stretching exercises, encouraged him to wean himself from the sling and to increase the use of his hand for activities of daily living, advised him to work under a 3-5 pound lifting restriction, prescribed over-the-counter medication and the use of ice and instructed him to follow up in four weeks. *PX1*.

Dr. Merk's June 28, 2012 record indicates that Petitioner telephoned the office. The note said that Petitioner "tried to work today but had problems as his injury is in his dominant arm." *PX1*.

Petitioner testified that on June 28, 2012, he reported to work but was unable to work the whole day. Petitioner testified that he told Connor that day that because he is left-handed, he found that any function that he normally performed with his left hand were nearly impossible. Petitioner testified that Connor then told him to go home. *PX1*.

Petitioner testified because of the problems he had on June 28, 2012, he did not report to work on June 29, 2012. Petitioner claimed that Respondent was not able to accommodate his 3-5 pound lifting restriction. Dr. Merk's June 29, 2012, record indicates Petitioner visited the office that date and reported that he performed neither social nor occupational activities of daily life. Although Petitioner testified that Dr. Merk told him to stay off work at that time, there is no mention of Petitioner's work status in the June 29, 2012 record. *PX1*.

On July 11, 2012, Petitioner returned to Dr. Merk with complaints of "numbness in his left small and ring fingers, as well as kind of just generalized muscle ..." He also complained that he feels like he has not been having good control of his left forearm and has had difficulty writing. Otherwise, he states his range of motion is improving. Dr. Merk wrote that they would get Petitioner set up with occupational therapy to start moving his elbow, start improving his range of motion and give him more confidence with his arm. He instructed Petitioner to follow up in four weeks for a repeat clinical and radiographic evaluation. He also reported having difficulty writing and decreased range of motion. *PX1*.

Petitioner testified that he did not begin occupational therapy at that time.

Petitioner testified that he completed an Application for Adjustment of Claim on July 9, 2012.

Petitioner returned to Dr. Merk on August 8, 2012, in follow-up status/post left radial neck fracture, treated non-surgically. The doctor notes that, in general, Petitioner is improved but still has pain, particularly at night for which he periodically takes Norco. He rates his average daily pain at about 5/10. He still lacks some mobility and feels some numbness over the distribution of his fourth and fifth digits that radiates into his arm a little bit. He also notes some numbness in his lateral toes. He also has some discomfort in the neck region, after the fall. He notes, also, that as he attempts to use his arm, he gets some shaking sensation. On examining Petitioner, Dr. Merk finds some decreased range of motion. However, he finds 5/5 motor strength, intact profusion, intact pulse and normal refill. Dr. Merk also notes decreased subjective sensation over the arm. X-rays revealed that his fracture is fully healed and in anatomic alignment. Dr. Merk noted that the doctor had previously prescribed physical therapy, but apparently Petitioner had some other health problems and did not attend the therapy. The doctor encouraged Petitioner to participate in physical therapy and thought it would improve Petitioner's range of motion and strength and function. With regard to the constellation of neurologic type symptoms, Dr. Merk recommended a neurology evaluation and referred him in that regard. Dr. Merk instructed Petitioner to follow up with him in 6 weeks and imposed a five-pound lifting restriction and advised him to avoid repetitive activity with that arm. *PX1*.

Once again, Respondent provided no light-duty work. Instead, that same day, Petitioner's employment with Respondent was terminated.

On August 10, 2012, Alan Shepard, M.D., a neurologist, saw Petitioner. *PX3*. Petitioner reported that about six weeks ago, he slipped on some water and fell. He did not have time to put his hand out to stop the fall. His left elbow broke his fall. Petitioner complained of numbness and tingling in the last two digits of his left hand and the last two toes on his left foot. Petitioner also has noticed a tremor. After the fall, he was diagnosed with Merkel Cell Carcinoma. Physical exam revealed decreased sensation in Petitioner's left hand in the ulnar distribution and decreased sensation of the left lateral S1 distribution on the left side. *PX3*. Dr. Shepard's assessment: neuralgia, neuritis, radiculitis, unspecified (729.2) and late effect of injury to nerve root(s), spinal plexus(es) and other nerves of trunk (907.3). Dr. Shepard also wrote: "The ulnar sensory nerve at the wrist likely is post traumatic, as is the foot. Doubt plexopathy, and the tremor I feel is also consistent with nerve issues." He recommended an NCV/EMG. *PX3*.

On August 17, 2012, Dr. Shepard noted that the EMG results suggest an ulnar neuropathy at the elbow. His plan was to obtain imaging (MRI) and begin therapy. *PX3*.

On August 27, 2012, Petitioner underwent an MRI, without contrast, of his left upper extremity. The radiologist's impression of the images is as follows: PROXIMAL LEFT FOREARM MEDIAN AND ULNAR NERVE EDEMA OVER A 7 CM. LENGTH, STARTING AT THE LEVEL OF THE RADIAL TUBEROSITY. NO COMPRESSING MASS, OR MUSCLE EDEMA OR FATTY ATROPHY IS VISUALIZED. NON-DISPLACED RADIAL NECK FRACTURE. *PX3*.

On September 7, 2012, Petitioner returned to Dr. Shepard and complained that he cannot put his arm on anything hard because it hurts, that he still has sensory loss in the left ulnar distribution and that his tremor persists. He also mentioned to Dr. Shepard that he is "getting chemo." Dr. Shepard noted that Petitioner has yet to start occupational therapy. Dr. Shepard reviewed the MRI, which showed edema from his fall of several months ago, and determined that Petitioner needed Lyrica and Neurontin. Dr. Shepard's assessment (729.2 & 907.3) remained the same. He noted that Petitioner would be seeing Dr. Merk. Dr. Shepard did not record a Return to Office date as he had with Petitioner's first two visits. *PX3*.

On September 11, 2012, Petitioner returned to Dr. Merk. The doctor noted that Petitioner is doing his own range of motion at home and has not attended physical therapy yet. He noted that Petitioner has seen Dr. Shepard and was started on Lyrica, but overall has not seen a difference. He continues to report neurological symptoms such as tingling and numbness in various parts of his body, particularly his left ulnar digits. *PX1*. X-rays revealed a healed radial head fracture. Upon examination, Dr. Merk found Petitioner to be in no apparent distress, alert and oriented x3, left upper extremity. He has near full range of motion in the left elbow. He is lacking maybe three to five degrees of supination and three to five degrees of extension, otherwise symmetric with his contralateral side. He is neurovascularly intact. He does have mildly decreased sensation in the ulnar two digits, however this is intact. He also has some pain associated with percussion of the ulnar nerve on the left. Otherwise, it is normal exam. Dr. Merk determined on this date that Petitioner's non-displaced left radial head fracture was radiographically and clinically healed. From that standpoint, Dr. Merk opined, "there is no more follow up with us necessary" and "at this time there are no ongoing orthopaedic issues" and he "can follow up on an as needed basis." Dr. Merk stated that Petitioner has some ongoing neurological issues, which we recommend he continue to manage with Dr. Shepard. *PX1*.

At the time of trial, Petitioner testified that writing, typing and lifting causes pain. He further testified that when he writes, his hand shakes uncontrollably. When he lifts things with his left arm, he drops them. When he puts his left elbow on a hard surface, he experiences pain in the elbow. Petitioner further testified that he has pain when he extends his left arm, and that he is awakened three to four times a night as a result of such arm pain.

A "Physical Demands Analysis", which was completed by Respondent, indicates Petitioner's job required him to lift 1-10 pounds frequently, and 11-50 pounds occasionally. His job also required occasional, fine manipulation grasping, reaching, and feeling, as well as frequent keying. Constant repetitive use of the hands was also required. According to this analysis, Respondent was not able to accommodate "transitional duty" work. *PX5*.

Petitioner admitted that he told Rebecca, the claims adjuster for Respondent's insurance carrier, that he earned $60,000 a year. Petitioner testified that at some point after the accident but before July 8, 2012, he had a telephone conversation with Connor in which Connor stated he also told the insurance carrier that Petitioner earned $60,000 a year. Petitioner also testified that Rebecca told him that Connor had verified his $60,000 salary.

Connor denied telling Rebecca that Petitioner earned $60,000 a year.

Petitioner testified that Connor paid him $5,000 before Petitioner sustained his accidental injury

Petitioner admitted that he began receiving TTD checks from Respondent's carrier after that time. Initially, the amounts of the checks were between $545.00 and $769.00. However, they dropped down to $253.00 per week in approximately August 2012.

A couple weeks after the last day he worked for Respondent, Petitioner and Connor met for coffee at a Starbucks to discuss how Petitioner was doing. Petitioner underwent surgery to remove a tumor from his groin around that time. According to Connor, Petitioner expressed an interest in working as an independent contractor rather than as an employee, and Connor invited him to submit a bid. Connor considered this to be a voluntary resignation. Petitioner denied that

he ever requested to work as an independent contractor or that he ever resigned, but emails in July and August 2012 show that he did submit two separate cost proposals to work for Respondent on a contract basis. *RX6, RX9*. Petitioner testified that on August 8, 2012, he was fired. Connor testified that he rejected Petitioner's bid to work as an independent contractor and did not consider him an employee anymore.

Petitioner started his own business, Music Professional Organization LLC ("M.P.O."), in early 2012. According to Petitioner, M.P.O. is a web-based promotional services organization that acts as a conduit for selling sheet music, musical instruments, and other music-related products and services. He registered M.P.O. with the Secretary of State on January 18, 2012. *PX8, RX13*. Petitioner ran his business from his home. Petitioner testified that the MPO website was operational in January, but a Facebook post from him on July 7, 2012 indicates that it "went live" on that date. *RX15*. Petitioner admitted that M.P.O.'s services were not offered for free, and that he operated M.P.O. with the intent to turn a profit. He testified that he told Connor about this business in February 2012, but Connor denied that he knew anything about it until after it went live in July 2012.

Rebecca Miranda, an Adjuster with Respondent's insurance carrier, issued a letter to Counsel for Petitioner by fax on September 10, 2012. In her letter, Miranda stated that she had determined Petitioner was running his own business and this disputed his entitlement to TTD.

In a note dated September 11, 2012, Dr. Merk stated that Petitioner's fracture had healed and he discharged him from care to return on an "as needed" basis. *PX1*. Although the doctor referenced ongoing neurological issues for which he referred Petitioner to Dr. Alan Shepherd, he did not impose any physical restrictions. Dr. Shepherd examined Petitioner on August 10, 2012; August 17, 2012; and September 7, 2012. *PX3, PX5*. None of Dr. Shepherd's notes contains any indication of physical restrictions.

II. Conclusions of Law

In support of the Arbitrator's Decision relating to Issue (F), is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator makes the following conclusions of law:

It is axiomatic that a claimant bears the burden of proving all the elements of his claim to recover benefits under the Workers' Compensation Act. Ingalls Memorial Hospital v. Industrial Commission, 241 Ill.App.3d 710, 716 (1st Dist. 1993). His burden includes proving a causal connection between the work accident and his condition of ill-being. Lee v. Industrial Commission, 167 Ill.2d 77, 81 (Ill. 1995). Liability cannot rest on imagination, speculation, or conjecture. Illinois Bell Telephone Co. v. Industrial Commission, 265 Ill.App.3d 681, 685 (1st Dist. 1994).

It is undisputed that Petitioner sustained an accidental injury to his left elbow when he slipped and fell on the stairs while working for Respondent on June 21, 2012.

Petitioner testified that he also injured his left shoulder and neck.

The Arbitrator does not find Petitioner credible on this point.

The Arbitrator has carefully examined the initial emergency room records of Northwestern Memorial Hospital of June 21, 2012. These records document Petitioner's stated history of falling onto his left side and injuring his left arm. *PX2*. These records also document that Petitioner reported striking his head on a "door step." *PX2*. While the records do show that he complained of left shoulder pain that radiated into his fingers, they also show that he specifically denied any neck pain. *PX2*. X-rays confirmed a radial head fracture of the left elbow. *PX2*. X-rays of his left clavicle were unremarkable. *PX2*. Petitioner's diagnosis at the time of discharge was a radial head fracture of the left elbow. *PX2*. The records contain no diagnosis regarding the left shoulder or the cervical spine.

Petitioner followed up with Bradley R. Merk, M.D., beginning on June 26, 2012. *PX1*. The Arbitrator also has carefully examined Dr. Merk's records. Dr. Merk reviewed x-rays of Petitioner upper left extremity and noted: "the only abnormality is very subtle, cortical disc

irregularity of the anterior aspect of the radial head neck junction with associated fat pad." Dr. Merk's impression was a minimally nondisplaced radial head fracture of the left elbow. *PX1*.

On August 8, 2012, which is the date on which his employment with Respondent ended, he complained to Dr. Merk for the first time of numbness in his lateral toes, a shaking sensation in his left arm and some discomfort in the neck region after his fall. (Emphasis added.)

The Arbitrator also points out that on August 10, 2012, Petitioner reported to Dr. Shepard that after his fall, he was diagnosed with Merkel Cell Carcinoma. On September 7, 2012, Petitioner told the doctor that he was "getting chemo."

Dr. Merk's treatment through September 11, 2012 focused solely on Petitioner's left elbow. *PX1*.

The Arbitrator also has examined Dr. Alan Shepherd's records and finds that treatment focused on the left elbow. *PX3*. Dr. Shepherd mentioned Petitioner's foot and lumbar spine. Yet, but there is nothing to connect either of these body parts to his work injury. Petitioner did not allege injuries to either of these areas, anyway.

The Arbitrator finds, based on the medical records of Northwestern Memorial Hospital, Dr. Merk, and Dr. Shepherd, that Petitioner sustained a fracture of the radial head of the left elbow as a result of his accidental injury of June 21, 2012.

Other than a negative x-ray of the left clavicle on the date of accident, there is no evidence of any treatment for the left shoulder in the emergency room or anywhere else that would corroborate a left shoulder injury. Furthermore, the Petitioner specifically denied neck pain in the emergency room on the date of accident. On August 8, 2012, which is nearly seven weeks after the accident, Petitioner first voiced complaints of discomfort in his neck after his fall.

Indeed, Petitioner's own Application for Adjustment of Claim alleges injuries to his left arm only—not to his neck or any other body part. *RX1*. The evidence refutes Petitioner's claim that he sustained an accidental injury to his left shoulder and neck.

In support of the Arbitrator's Decision relating to Issue (G), what were Petitioner's earnings, the Arbitrator makes the following conclusions of law:

The Arbitrator has carefully examined Respondent's subpoena response, particularly the wage statement (*RX2*), the handwritten notation concerning Petitioner's wage reduction,and Petitioner's W2s (*RX16*). The Arbitrator has also carefully considered the testimony of both Steve Devaney and Frank Hayden Connor.

On cross-examination, Connor was asked about the email message that he sent Petitioner on July 15, 2012. (*RX6*) Such email message includes the following sentence: "As I explained, unfortunately I cannot pay you the $10,000 I owe you in back salary at this time." Connor testified that Petitioner would receive the $10,000 when the company was in a stronger financial position. Connor testified that the reduction in pay that he established was company-wide.

Language in the rough draft contract includes the following: " ... with another $30,000 held in abeyance until it can be afforded from cash flow, and will be paid retroactively. These [sic] money must come from actual cash profits ..."

The Arbitrator concludes that the payment of "another $30,000" was conditional.

Due to the downturn in the economy, and after the date on which the rough draft contract was sent out, Connor reiterated that he actually had to institute across-the-board salary *cuts*.

None of Respondent's financial statements were offered into evidence.

Petitioner argues that "another $30,000" was deferred compensation. In support of his argument, Petitioner cites a Commission case, Robert Hart v. State of Illinois, Dept. of Agriculture, 04 IIC 0254.

In Hart, claimant participated in a deferred compensation scheme in the year preceding the accident. Accordingly, the deferred compensation amount did not appear on his regular check. Claimant testified that he understood his deferred compensation to be part of his earnings. The Commission held that claimant's average weekly wage should include deferred

compensation. Because the State of Illinois was the Respondent, the case could not be appealed to the judiciary.

The Commission's holding in Hart is not precedent for the issue before the Arbitrator in this case.

The Arbitrator notes that Section 10 of the Worker's Compensation Act states, in relevant part, the following:

> The compensation shall be computed on the basis of the "Average weekly wage" which shall mean **the actual earnings of the employee** in the employment in which he was working at the time of the injury during the period of 52 weeks ending with the last day of the employee's last full pay period immediately preceding the date of injury, illness or disablement, excluding overtime and bonus, divided by 52; but if the injured employee lost 5 or more calendar days during such period, whether or not in the same week, then the earnings for the remainder of the 52 weeks shall be divided by the number of weeks and parts thereof remaining after the time so lost has been deducted. Where the employment prior to the injury extended over a period of less than 52 weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee actually earned wages shall be followed . . . (Emphasis added.)

Based on the facts and the law, the Arbitrator finds that Petitioner's average weekly is $388.57. Petitioner admitted that his earnings for 2010 and 2011 were accurately reflected in his W2s. Petitioner was paid a salary based on 40 hours a week, and his hourly wage rate was reduced from $14.43 to $9.62 starting on July 4, 2011. The Arbitrator arrives at this figure by adding up Petitioner's total earnings between June 27, 2011 and June 15, 2012 ($19,817.20) and dividing that figure by 51 weeks, which is the total number of weeks available in the Record. The Arbitrator excluded the week of June 18, 2012 because it includes the accident date, and is only four days (not five as indicated).

In support of the Arbitrator's Decision relating to Issue (L), what amount of compensation is due for temporary total disability, the Arbitrator makes the following conclusions of law:

Respondent argues that since M.P.O. (Petitioner's online business venture) "went live" on July 7, 2012, Petitioner is not entitled to TTD benefits.

Petitioner admitted that he paid someone to put together a website for M.P.O., and that the purpose of M.P.O. was to be a profitable promotional services company.

However, there is no evidence that M.P.O. generated any revenue for Petitioner, much less occasional wages.

Evidence that an employee has been or is able to earn occasional wages or to perform certain useful services neither precludes a finding of total disability nor requires a finding of partial disability. Zenith Co. v. Indus. Comm'n, 91 Ill.2d 278, 437 N.E.2d 628 (1982).

Petitioner lost time from June 22, 2012 until he attempted to return to work with restrictions on June 28, 2012. He worked part of the day on June 28, 2012 and went home. When Dr. Merk examined Petitioner on June 26, 2012, he had imposed a weight restriction of no lifting over 3-5 pounds. *PX1*.

On August 8, 2012, Dr. Merk imposed a five-pound lifting restriction and advised Petitioner to avoid repetitive activity with his left arm. *PX1*.

On August 8, 2012, when Frank Hayden Connor fired Petitioner, Petitioner still had light-duty restrictions.

> "Whether an employee has been discharged for a valid cause, or whether the discharge violates some public policy, are matters foreign to workers' compensation cases. An injured employee's entitlement to TTD benefits is a completely separate issue and may not be conditioned on the propriety of the discharge . . . the determinative inquiry for deciding entitlement to TTD benefits remains, as always, whether the claimant's condition has stabilized. If the injured employee is able to show that he continues to be temporarily totally disabled as a result of his work-related injury, the employee is entitled to TTD benefits." Interstate Scaffolding v. Illinois Workers' Comp. Comm'n, 236 Ill. 2d 132, 149, 923 N.E.266 (2010).

The Arbitrator finds that on September 11, 2012, Dr. Merk discharged Petitioner from his care and instructed him to return on as as-needed basis only. Dr. Merk did not impose any permanent work restrictions on Petitioner at that time.

The Arbitrator has carefully reviewed Dr. Shepard's records and finds that he never imposed work restrictions on Petitioner. In fact, he never mentioned Petitioner's work status at all.

Based on the foregoing, the Arbitrator finds that Petitioner is entitled to TTD benefits from June 22, 2012 through September 11, 2012.

In support of the Arbitrator's Decision relating to Issue (M), should penalties or fees be imposed upon Respondent, the Arbitrator makes the following conclusions of law:

Bona fide disputes existed as to Petitioner's earnings and the length of his temporary total disability. Therefore, the Arbitrator finds that neither penalties nor attorney's fees are warranted in this case.

STATE OF ILLINOIS	)	☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
	) SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
COUNTY OF KANE	)	☐ Reverse	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Laura Hurst,

Petitioner,

vs. NO: 11 WC 33874

14IWCC0095

Walmart Inc. Store #4529,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection and the duration of temporary total disability and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission finds that Petitioner is entitled to temporary total disability payments from July 23, 2011 through July 29, 2011 and from August 20, 2011 through February 25, 2012.

The Commission adopts the findings of Dr. Grear about the type of work Petitioner was capable of doing. His testimony was more credible than the opinions of Dr. Hansoor. Dr. Grear felt that Petitioner could return to medium type work on January 8, 2012. (Respondent Exhibit 8 Pgs. 9-18)

The Commission finds that bona fide job offers of a desk job were made to the Petitioner on January 5, 2012 and January 19, 2012. These were job offers that Dr. Grear felt Petitioner could handle. (Respondent Exhibit 2)

Although there is some questions as to when and if the Petitioner received these letters there is no doubt that Petitioner had an in-person meeting with Denise Jernigan the co-manager of the Respondent on February 25, 2012. At this meeting, Ms. Jernigan gave the Petitioner a job offer consistent with the deskwork Dr. Grear felt she could handle. The Petitioner refused to accept this job offer. (Transcript Pgs. 79-81)

Therefore, the Commission finds that the Petitioner refused a job that she could have handled on February 25, 2012. Petitioner's temporary total disability benefits ends as of that date.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $220.00 per week for a period of 27 6/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $44,486.24 for medical expenses under §8(a) and 8-2 of the Act. Respondent shall authorize the proposed L-3 and L-4 and L4-5 lateral lumbar fusion with allograft and the accompanying reasonable and necessary treatment until Petitioner reaches maximum medical improvement.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $50,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 1 1 2014

Charles J. DeVriendt

Michael J. Brennan

Ruth W. White

HSF
O: 12/10/13
49

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HURST, LAURA
Employee/Petitioner

Case# **11WC033874**

14IWCC0095

WALMART INC STORE #4529
Employer/Respondent

On 1/24/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2221 VRDOLYAK LAW GROUP LLC
MEGAN WAGNER
741 N DEARBORN ST 3RD FL
CHICAGO, IL 60654

0560 WIEDNER & MCAULIFFE LTD
JUSTIN T SCHOOLEY
1 N FRANKLIN ST SUITE 1900
CHICAGO, IL 60606

STATE OF ILLINOIS)
) ss. 14IWCC0095
COUNTY OF COOK)

- ☐ Injured Workers' Benefit Fund (§4(d))
- ☐ Rate Adjustment Fund (§8(g))
- ☐ Second Injury Fund (§8(e)18)
- ☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Laura Hurst
Employee/Petitioner

v.

Walmart, Inc. Store #4529
Employer/Respondent

Case # **11** WC **033874**

Consolidated cases: **N/A**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gregory Dollison**, Arbitrator of the Commission, in the city of **Geneva, Illinois** on **November 19, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
   ☐ TPD ☐ Maintenance ☒ TTD
L. ☐ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **Prospective medical treatment**

FINDINGS

On **7/22/2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **$16,744.00**; the average weekly wage was **$322.00**.

On the date of accident, Petitioner was **49** years of age, ***single*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$3,017.15** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$3,017.15**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **$220.00**/week for **66-1/7ths** weeks, commencing **7/23/2011** through **7/29/2011**, and from **8/20/2011** through **11/19/2012**, as provided in Section 8(b) of the Act.

Respondent shall pay reasonable and necessary medical services of **$44,486.24**, as provided in Sections 8(a) and 8.2 of the Act.

Respondent shall authorize the proposed L3-L4 and L4-5 lateral lumbar fusion with allograft and the accompanying reasonable and necessary treatment until Petitioner reaches maximum medical improvement.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

1/22/13
Date

JAN 24 2013

Findings of Fact:

Petitioner testified that on the date of accident, July 22, 2011, she was employed by Respondent as an unloader. She testified her job duties were to unload freight from the trucks which delivered merchandise to the store. She would unload the truck from a conveyor belt and stack the items on pallets and deliver them to the departments in the store so they could be stocked. She testified the boxes weighed any where from ounces to hundreds of pounds and there was no set weight limit. She testified the maximum she would lift by herself was about 50 pounds and she would have another person help her lift anything over 50 pounds, which is known as a "team lift." She testified each truck had to be unloaded in two hours maximum. She testified the manager on duty would time how long it took a team to unload each truck and if they could not unload a truck in less than two hours they would "get scolded." She testified trucks might carry an average of 1700 pieces and a team of about six people plus a supervisor would unload the truck. She testified her job consisted of anywhere between two to four hours of unloading. Petitioner testified that during the remainder of her shift she would sort merchandise into various departments and deliver items to such departments, help stock the floor, and clean the back area of the store.

The "unloader" job description submitted by Respondent indicates that the following are essential physical activities for the position: reaches overhead and below the knees, including bending, twisting, pulling, and stooping; grasps, turns, and manipulates objects of varying size and weight, requiring fine motor skills and hand-eye coordination; moves up and down a ladder; moves, lifts, carries, and places merchandise and supplies weighing less than or equal to 50 pounds without assistance; safely operates motor vehicles or other large power equipment. (Resp. Ex. 3) This job description further indicates employees must work overnight; move through narrow, confined, or elevated spaces; and move over sloping, uneven, or slippery surfaces. (Resp. Ex. 3) The description further indicates that an unloader must: maintain merchandise presentation by stocking and rotating merchandise, removing damaged or out of date goods, setting up, cleaning, and organizing product displays, signing and pricing merchandise appropriately, and securing fragile and high-shrink merchandise; maintain area of responsibility in accordance with Company policies and procedures by properly handling claims and returns, zoning the area, arranging and organizing merchandise/supplies, identifying shrink and damages, and ensuring a safe work environment; receive and stock merchandise throughout the facility and organize and maintain the backroom by following Company safety, cleaning, and operating procedures, utilizing equipment appropriately, setting up displays, maintaining modular integrity, receiving, sorting, staging, and delivering merchandise, and completing paperwork, logs, and other required documentation. (Resp. Ex. 3)

Petitioner testified that on July 22, 2011, she was unloading cases of gallons of iced tea, with some cases holding six gallons and some cases holding four gallons. Petitioner testified that after unloading five or six cases of iced tea she put a case down onto the pallet and as she came up she felt pain, popping, and a strange sensation down her leg. Petitioner testified this incident occurred at about 5:25 p.m. Petitioner testified she initially thought it was something she could work through, just a "kink." She testified she tried to work but the pain got progressively worse until she had to vomit. Petitioner testified that after vomiting, she realized she was actually hurt and at about 5:40 p.m. she decided to tell her supervisor, Rich. Petitioner testified that upon informing Rich he asked her to go ahead and work through it until lunchtime. Petitioner testified she continued to work to the best of her ability but was "very slow and mopey at that point." Petitioner testified that after lunch she reported to Rich's supervisor, Christina, and made an incident report. She testified Christina sent her home with instructions to go to the ER if she got any worse.

Petitioner testified that after leaving work on July 22, 2011 she went home and sat on a heating pad, tried to ice her injury, and tried to stay comfortable for the evening. Petitioner testified that by the next morning she was

still pretty hurt and she went and checked in at Walmart. She testified that the store manager, Dave, drove her to Silver Cross Emergency Room.

On July 23, 2011, Petitioner presented to Silver Cross Emergency Room. Records indicate her symptoms began "yesterday…when lifting boxes." (Pet. Ex. 1. p. 7) Petitioner's symptoms were aggravated with bending and alleviated with remaining still. (Pet. Ex. 1. p. 7) Dr. Joseph Cortez examined Petitioner and indicated: moderate pain of left low back; ROM was painful with flexion, extension; and muscle spasm in the left low back. (Pet. Ex. 1. p. 8) Dr. Cortez noted that the "problem is new" and indicated no prior back injuries. (Pet. Ex. 1. p. 11) Dr. Cortez diagnosed Petitioner with a back sprain; prescribed flexeril and tramadol; placed her off work for one day; and indicated she should follow up in 2-3 days with a private physician. (Pet. Ex. 1. p. 11) Petitioner's x-ray report of the lumbar spine notes that she had pain in the low back, more on left than right and radiating down her left leg and indicates discogenic changes at L4-L5 and mild disc space narrowing at L4-L5. (Pet. Ex. 1. p. 14) The X-Ray report further notes "if symptoms persist, an MRI of the lumbar spine may be obtained for further assessment." (Pet. Ex. 1 p. 14)

On July 26, 2011, Petitioner reported to Dr. James Niemeyer, Respondent's occupational doctor, at MedWorks Occupational Health. (Pet. Ex. 2. p. 3) Petitioner reported that on July 22, 2011 she was unloading boxes off a truck at work, using proper lifting mechanics and wearing her low back brace, but she injured her low back and was sent home due to pain. (Pet .Ex. 2. p 3) Petitioner's symptoms were pain in the small of her back radiating to left into buttocks then laterally to front of her thigh, with some parethesias in her left leg. (Pet. Ex. 2. p. 3) Dr. Niemeyer's exam indicated: ROM forward flex was to about 18 inches from top of toes before pain stopped her from going further; extension was full but painful at the extreme of motion; Patrick's test was positive on left negative on right; she had tenderness over SI joint; and discomfort in region where piriformis would coerce. (Pet. Ex. 2. p. 3) Dr. Niemeyer diagnosed Petitioner with a lumbosacral strain/sprain; prescribed tramadol, flexeril, and naproxen; recommended alternating ice and heat. (Pet. Ex. 2. p. 4) Dr. Niemeyer placed her off work for the next 3 days as "she tried to go back to work last night at a sedentary duty position but was unable to complete the course." (Pet. Ex. 2. p. 4)

On August 1, 2011, Petitioner followed up with Dr. Niemeyer and indicated her pain was better but that she still felt very stiff. (Pet. Ex. 2. p. 9) Dr. Neimeyer indicated she still had paraesthesis into the left thigh, which was quite bothersome to her. (Pet. Ex. 2. p. 9) Upon exam, Dr. Niemeyer noted ROM showed her forward flexion to about 6 inches from the top of her toes, which was an improvement, but that she stopped secondary to pain and tightness in the small of her back. Petitioner's extension was full but painful at the extreme of motion. Extension was more painful than flexion.Dr. Neimeyer made the same recommendations as he had on July 26, 2011 and recommended an MRI of the lumbar spine to determine if a disc bulge was present. He placed her back to work with sedentary restrictions of maximum lifting of 10 pounds with occasional carrying, pushing, or pulling objects weighing no more than 10 pounds with occasional walking and standing, and advised her to visit him if she had problems. (Pet. Ex. 2. p. 9, 10)

On August 2, 2011, Respondent offered Petitioner a position as a fitting room associate from 4 p.m. to 1 a.m. Petitioner accepted this position. (Resp. Ex. 6) Petitioner testified that her fitting room duties were to answer the phones and attend to the fitting room. Petitioner elaborated that some of her duties included locking and unlocking the doors to the fitting rooms; re-hanging clothing and putting it back on the floor; keeping the area clean; and sweeping the floor. She testified she had to bend to pick things up and that she was unable to do so, and that she was required to twist when placing items on racks. Respondent's job description for this position indicates the following physical activities are essential to the position: reach overhead and below the knees, including bending, twisting, pulling, and stooping; move, lift, carry, and place merchandise and supplies weighing less than 10 pounds without assistance; grasp, turn, and manipulate objects of varying size and weight, requiring fine motor skills and hand-eye coordination. The job description further states that fitting room associates must, among other duties, assist with locating merchandise; maintain the fitting room in

accordance with Company policies and procedures by properly handling claims and returns, zoning the area, arranging and organizing merchandise/supplies, and ensuring a safe work environment; and maintain the fitting room by folding and hanging clothing, returning merchandise to appropriate departments, and answer the phone for the entire facility. (Resp. Ex. 6)

On August 8, 2011, Petitioner returned to Dr. Niemeyer and indicated that she was stiffer than during the previous week. Petitioner's forflex regressed to 12 inches above her toes. Dr. Niemeyer maintained the same light duty restrictions, and again requested authorization for an MRI. (Pet. Ex. 2. p. 14) On this date, Petitioner again accepted the fitting room attendant position. (Resp. Ex. 1)

On August 15, 2011, Petitioner returned to Dr. Niemeyer who stated, "still have not heard anything about the approval for her MRI scan." Dr. Niemeyer later indicates in the record, "Again, we are waiting on the approval of the MRI scan so we can move forward with care and treatment." Petitioner indicated her symptoms remained unchanged. Dr. Niemeyer kept Petitioner on the same light duty restrictions. (Pet. Ex. 2. p. 15) On August 16, 2011, Petitioner again accepted the fitting room attendant position. (Resp. Ex. 5)

On August 23, 2011, returned to Dr. Niemeyer "complaining more and more about her low back pain." Dr. Niemeyer indicates Petitioner missed work "this past Saturday and Sunday due to increased pain. She is having a lot of spasms. She is trying to work at the sedentary duty job but she is unable to take her muscle relaxer or pain killers secondary to them making her drowsy." Dr. Niemeyer further noted the pain was all in the small of her back. He noted "I believe this is the third week in a row we have been requesting an MRI scan and it is yet to be approved or authorized." Upon exam, he noted she could only forward flex to 20 inches above her toes; extension was about 20% of normal of both provocative or centralized low back pain. Dr. Neimeyer indicated "I took her off work for the next week," and that she should be excused for work missed on August 20 and August 21, 2011. He also commented, "NEEDS MRI!" (Pet. Ex. 2. p. 18,19)

Petitioner testified that, following her duties as fitting room associate, she was having "so much pain; it was very difficult to do that [job]." Petitioner testified she told Dr. Niemeyer her medication interfered with her ability to perform the light duty job, as it caused extreme drowsiness and impaired her judgment. She testified it is against store policy to be "under the influence at work."

On August 26, 2011, Petitioner presented to Dr. Ravi Barnabas at Alivio Therapy and Chiropractic. Petitioner indicated to Dr. Barnabas that on July 22, 2011 she felt a pull and a pop in her lower back when unloading a heavy box weighing about 40 pounds. Petitioner rated her back pain at 7-8/10 and indicated it radiated down the left leg with tingling and numbness and at times her left leg felt weak. Dr. Barnabas' exam states: palpation revealed tenderness in the lumbosacral spine on both SI joints in L4-5-S1 area; forward flexion was 20; hyperextension was 15; right lateral bending was about 15 on the left and 25 on the right; straight leg test was positive on left at 30 degrees for pain, radiculopathy at the right side was 45. Additionally, Dr. Barnabas noted Patricks and Milgrams tests were positive. He noted Petitioner's gait had a limp, she was unable to perform the heel to toe walk due to her pain, and had spasms in her low back. He diagnosed Petitioner with acute lumbar strain/sprain; lumbar spine radiculitis; lumbar disc displacement; and lumbago. He recommended an MRI and continued Petitioner's pain medication prescriptions. (Pet. Ex. 3 p.4,5)

That same day, Petitioner underwent an MRI of the lumbar spine at Delaware MRI which was performed by Dr. Brian Fagan, MD, and revealed mild degenerative changes at L3-4 and L4-5 and mild narrowing of foramina bilaterally from diffuse disc bulge at L3-L4, with disc material abutting exiting nerve roots bilaterally in the far lateral foramina. (Pet. Ex. 4 p. 3)

On August 31, 2011, Petitioner began physical therapy ATI, at the referral of Dr. Barnabas. Petitioner indicated she felt a pop in her back when she was unloading several boxes weighing over 40 pounds each. The

notes further indicate Petitioner attempted light duty but had an increase in pain. Petitioner had intermittent back spasms and numbness in the left thigh. Petitioner rated her pain at rest as 5/10 and pain during activity at 8-9/10. Petitioner indicated she felt better when lying in a supine position. Petitioner indicated pain was worst when sitting and walking more than 10-15 minutes. She indicated her pain caused disruptions in her sleep. (Pet. Ex. 5 p. 3) Upon exam, Petitioner demonstrated significant tightness along the thoracic/lumbar areas; hip flexion was limited to 90 degrees due to pain; decreased ROM in the trunk and lumbar areas; decreased lumbar, core and LE strength; fair posture; palpable tenderness, spasm, and increased soft tissue tension over the thoracic/lumbar PSP; increased complaints with transfers and transitional movements; and radicular symptoms in the left leg. (Pet. Ex. 5 p. 7, 9) Petitioner's symptoms were noted to be consistent with a diagnosis of low back pain and radiculopathy. (Pet. Ex. 5 p. 9) Petitioner was prescribed physical therapy three times per week. (Pet. Ex. 5 p. 10)

Petitioner presented to Dr. Sue Harsoor, at the recommendation of Dr. Barnabas, on September 1, 2011. Petitioner relayed that she was injured at work when unloading boxes weighing 30-40 pounds and felt pain in her low back. Petitioner rated her pain at 8/10. Petitioner indicated her pain was worsened with prolonged walking and prolonged sitting and improved by lying flat. She noted Petitioner was able to perform all activities of daily living. Dr. Harsoor reviewed Petitioner's MRI and noted that it showed multilevel disc bulges, facet arthritis with mild foraminal narrowing at L3-4 with disc material abutting the exiting nerve roots. Dr. Harsoor diagnosed her with radiculopathy of the lumbar spine and myofascial pain. She advised Petitioner to continue physical therapy and to consider epidural steroid injections. (Pet. Ex. 6 p. 3-5)

On September 21, 2011, Kristin Swidergal, MPT, evaluated Petitioner's physical therapy progress at ATI. Ms. Swidergal noted Petitioner's pain was 8-9/10 at that time and averaged about 6/10. Petitioner demonstrated modest improvement in tissue pliability at thoracic and lumbar PSPs; guarded mobility with improved posture and increased cadence with ambulation; and she was able to lie prone but was still limited with standing and ambulating after 20-30 minutes. Ms. Swidergal noted Petitioner had left leg pain, weakness, and decreased flexibility but had minimally improved trunk flexibility. Petitioner's tolerance for activity improved but remained significantly limited by pain. Ms. Swidergal indicated Petitioner would be unable to work as an unloader with a medium-heavy lifting requirement. (Pet. Ex. 5. p. 18)

On September 22, 2011, Petitioner presented to Dr. Harsoor and indicated her pain was 9/10; the pain was constant/throbbing/shooting; radiated to left lower extremity; and caused numbness and muscle spasms. Petitioner noted her pain worsened with prolonged walking and sitting, but was better when lying flat. She noted Petitioner was able to perform all activities of daily living. Dr. Harsoor recommended L3-L4 epidural steroid injections and continued physical therapy. (Pet. Ex. 6 p. 7-9)

On October 3, 2011, Ms. Swidergal evaluated Petitioner's physical therapy progress at ATI. Petitioner rated her pain as 5/10 average.Ms. Swidergal noted Petitioner had decreased tension and sensitivity to the L/S area; slow cautious mobility, especially with change of position; walking tolerance of 15-20 minutes, standing tolerance of 15-20 minutes, sitting tolerance of 15 minutes which increased with use of hot or cold packs or being in a reclined seated position. Ms. Swidergal noted Petitioner had left leg pain, weakness, and decreased flexibility and minimally improved trunk flexibility. Petitioner's tolerance for activity remained significantly limited by pain. Ms. Swidergal indicated Petitioner would be unable to work as an unloader with a medium-heavy lifting requirement. (Pet. Ex. 5. p. 23)

On October 11, 2011, Dr. Harsoor performed an L3-L4 lumbar epidural steroid injection with trigger point injections at Rogers One Day Surgery on Petitioner. (Pet. Ex. 6. P. 12-14)

On October 17, 2011, Ms. Swidergal evaluated Petitioner's physical therapy progress at ATI. Petitioner noted she no longer had the "grabbing pain," and she thought the injection worked. She noted she still felt the

left leg was weaker than the right and still had difficulty bending over to put on her socks and shoes. Ms. Swidergal noted she still had tenderness along the lumbar spine, and lumbar PSPs. Petitioner's mobility improved and she was able to undergo 90 minutes of therapy. Petitioner's walking/standing tolerance was 20-30 minutes and her sitting tolerance was one hour. Ms. Swidergal indicated improved tolerance for activity but it was limited by fatigue and weakness of the left leg. She noted Petitioner was unable to work as an unloader at medium-heavy lifting requirements. (Pet. Ex. 5. p. 27)

On October 20, 2011, Petitioner presented to Dr. Harsoor and indicated her pain was down to 3/10; however, she noted her left leg continued to be numb and weak. Petitioner noted her pain worsened with prolonged walking and sitting, but was better when lying flat. She noted Petitioner was able to perform all activities of daily living. Dr. Harsoor recommended an L3-L4 epidural injection to relieve leg pain, and kept Petitioner off work through November 11, 2011. (Pet. Ex. 6 p. 21-26)

On October 24, 2011, Petitioner presented to Dr. Barnabas indicating that, following the injection, her pain was down to 4/10. Upon exam Petitioner had slight tenderness on her bilateral SI joints; her left lateral flexion was reduced with mild pain, and she had Babinski's down going. Dr. Barnabas assessed Petitioner with lumbar disc disease, disc bulges, and spinal cord compression, and recommended continued physical therapy and injections. (Pet. Ex. 3. p. 18,19)

On November 9, 2011, Petitioner presented to Dr. Barnabas indicating her pain was about 4/10. On exam Petitioner's ROM was limited, mainly at the end of flexion and extension. Petitioner had tenderness into the left gluteus maximums and into the trochanteric bursal area and into the area of the tensor fascia lata. Petitioner was given EMS and hot packs and advised to continue her physical therapy. Dr. Barnabas kept Petitioner off work "until further notice." (Pet. Ex. 3. p. 20,21)

On November 11, 2011, Ms. Swidergal evaluated Petitioner's physical therapy progress at ATI. Petitioner noted that her pain improved, but it "tighten[ed] up on [her] every now and then" and she was awaiting approval for her second epidural injection. Petitioner provided that she was not ready to transition to work conditioning and sometimes her leg was still very weak. Petitioner indicated she was able to donn/doff her socks and shoes without pain but she still had difficulty when lifting more than 15 pounds to her waist. Ms. Swidergal noted she still had tenderness along the lumbar spine, and lumbar PSPs. Petitioner had proper lifting techniques, but had an altered gait with decreased step length and guarded posturing. Petitioner was able to undergo 90 minutes of cardio and weight machines. Petitioner's standing tolerance was 20-30 minutes without upper extremity support, walking tolerance was 20 minutes without upper extremity support, and she was able to lie in the prone position for 5 minutes without lower back pain. Ms. Swidergal indicated improved tolerance for activity but it was limited by fatigue and weakness of the left leg. Ms. Swidergal indicated Petitioner had improved lifting techniques but remained limited in her tolerance for weight. She further noted Petitioner was unable to work as an unloader at medium-heavy lifting requirements. (Pet. Ex. 5. p. 34)

On November 22, 2011, Petitioner underwent a Section 12 exam with Respondent's examiner, Dr. Michael Grear. (Resp. Ex. 8. dep #2) Petitioner testified Dr. Grear examined her for about 10 minutes. Dr. Grear's report indicated Petitioner injured her back on July 22, 2011 while lifting crates of product weighing 20-30 pounds. (Resp. Ex. 8. dep #2) Dr. Grear noted Petitioner had pain in the low back with radicular pain into the left lower extremity; was released from work; and had been treated conservatively since her injury. He noted she had physical therapy for three months with moderate improvement, which was most dramatic following her first epidural injection. Dr. Grear stated Petitioner was prescribed naprosyn, tramadol, and soma but that she "only takes medications sporadically because they make her too sleepy."(Resp. Ex. 8 dep #2) At Arbitration, Petitioner testified she told Dr. Harsoor that her medication was causing her to sleep up to 16 hours after one dose. Petitioner further testified that she told Dr. Grear that she and Dr. Harsoor determined she should only take her medications in the evenings, after she finished her physical therapy for the day.

Additionally, Dr. Grear noted Petitioner had numbness/tingling into left leg, which had dissipated. He indicated Petitioner's pain localized to low back. Dr. Grear indicated any prolonged periods of sitting or standing elicited discomfort. Dr Grear indicated, Petitioner "drove here today on her own."(Resp. Ex. 8. dep #2) At Arbitration Petitioner testified she was driven to the exam by a transportation service provided by the insurance adjuster. Dr. Grear's exam indicated Petitioner moved with caution from sitting to standing; had negative straight leg raising in sitting position, and dull symmetrical reflexes at the knee and ankle. He further indicated she had paraspinal muscle spasms with voluntary resistance to forward flexion, left and right lateral rotation, and hyperextension. Dr. Grear viewed Petitioner's x-ray studies and her August 26, 2011 MRI. Dr. Grear indicated they showed no evidence of any significant intrathecal pathology and that mild degenerative changes were noted throughout the lower lumbar spine with mild foraminal narrowing at L3 and L4. Dr. Grear diagnosed Petitioner with a lumbosacral strain with left radiculopathy which was causally related to the injury of July 22, 2011. Dr. Grear indicated Petitioner's prior treatment was reasonable and customary. He noted Petitioner's subjective complaints were lower back pain radiating into her left buttocks and his objective findings were trace paraspinal muscle spasm in the lower LS. Dr. Grear indicated Petitioner had no prior injuries or preexisting conditions. With regard to further treatment, he recommended continued use of nonsteroidal anti-inflammatory medicines and to be admonished to take the medicine on a regular basis. Dr. Grear stated Petitioner's muscle relaxant, Soma, had been causing difficulty with sleepiness, he thus indicated "an alternative muscle relaxant should be considered." (Resp. Ex. 8 dep #2) Petitioner testified Dr. Grear did not identify any muscle relaxants that were considered non-drowsy.

Dr. Grear determined Petitioner had not reached maximum medical improvement. Dr. Grear recommended completing the series of injections, based on Petitioner's improvement following her first epidural injection. Dr. Grear noted "formal physical therapy" should be terminated and a home exercise program should be pursued. Dr. Grear anticipated Petitioner should be able to reach MMI in about eight weeks and should return to work following the completion of steroid injections. At that time, he indicated she could not return to normal work activities and would be able to return to a modified activity for eight weeks, at which time an FCE could be obtained to identify any residual work restrictions. Dr. Grear indicated Petitioner should be restricted to deskwork. (Resp. Ex. 8. dep #2)

On November 23, 2011, Petitioner presented to Dr. Barnabas complaining of pain in her low back at 4/10. Petitioner's ROM was painful mainly upon flexion and extension, lateral flexion and rotation improved but tenderness was noted into the lumbar paraspinal muscles, mainly on the left side and in the lumbar spine, with Milgram's test eliciting pain. Dr. Barnabas recommended work conditioning and placed Petitioner off work for two more weeks. (Pet. Ex. 3. p. 2.)

On November 25, 2011, Ms. Swidergal evaluated Petitioner's physical therapy progress at ATI. Petitioner noted she had increased lower back pain. Petitioner indicated she was having difficulty reaching forward to don/doff her socks and shoes and had difficulty lifting overhead. Ms. Swidergal noted she still had tenderness with PSPs at the lumbar spine and tautness at the thoracolumbar fascia. Ms. Swidergal noted Petitioner had proper lifting techniques, but had difficulty lifting overhead. Petitioner's standing tolerance was 20-30 minutes without upper extremity support, walking tolerance was 20 minutes without upper extremity support, and she was able to lie in the prone position for 5 minutes without lower back pain. Ms. Swidergal indicated Petitioner had continued left leg weakness; decreased trunk mobility and LE flexibility, and limited endurance. Ms. Swidergal noted Petitioner had improved since her initial evaluation and could benefit from work conditioning to prepare for work as an unloader. Petitioner was discharged from therapy to begin work conditioning. (Pet. Ex. 5. p. 40)

On December 2, 2011, John Connell, ATC, evaluated Petitioner's work conditioning progress at ATI. Mr. Connell indicated that no job description was available but Petitioner worked as a Store Laborer for Walmart.

He indicated, "this is considered a medium physical demand level occupation (occasional lifting 50 pounds) according to the client interview and the Dictionary of Occupational Titles (922.687.058)." Mr. Connell noted her current lifting ability was "light." Petitioner reported increased lower back pain with trunk rotation as her main complaint as well as general muscle fatigue. A FCE was recommended upon completion which was targeted as December 23, 2011. (Pet. Ex. 5. p. 57)

On December 6, 2011, Petitioner presented to Dr. Barnabas at Alivio complaining of pain at 4/10. Petitioner's ROM was painful on flexion, extension, lateral flexion, and rotation. Petitioner received EMS and hot packs, was advised to continue therapy at ATI, and was placed off work for two more weeks. (Pet. Ex. 3. p. 29,30)

Petitioner also presented to Dr. Harsoor on December 6, 2011. She reported pain at 5/10 and requested left sided epidural injections to relieve her pain. Petitioner indicated pain worsened with prolonged walking and sitting but got better when lying flat. The notes indicated that Petitioner was able to perform all activities of dialing living. (Pet. Ex. 6 p. 28-30)

On December 9, 2011, Petitioner's work conditioning progress at ATI was evaluated by Mr. Connell. Mr. Connell noted Petitioner reported generally increased tolerance to exercises but continued to report sharp lower back pain with activities involving lumbar rotation. Petitioner's current estimated PDL was Light. Petitioner displayed good effort each day. (Pet. Ex. 5. p. 66)

On December 13, 2011, Petitioner presented to Dr. Harsoor complaining of pain at 6/10, with continued numbness and weakness in the left leg. Dr. Harsoor administered left transforaminal epidural injections at L4 and L5 with trigger point injections. Dr. Harsoor placed Petitioner off work until January 3, 2012 due to injection, muscle spasms, and back pain. (Pet. Ex. 6. p. 32-36)

On December 16, 2011, Petitioner's work conditioning progress at ATI was evaluated by Mr. Connell. Petitioner continued to report her main complaint was increased lower back pain with activities involving lumbar rotation and pain with prolonged standing and walking. Petitioner's current estimated PDL was Light to Medium. (Pet. Ex. 5. p. 75)

On December 21, 2011, Petitioner presented to Dr. Bermudez with complaints of soreness in her low back but indicating pain had diminished following injection. On examination Petitioner's ROM was painful at the end of flexion and extension with tenderness noted in the lumbar paraspinal muscles and the lumbar spine with increased pain and trigger points noted in the left side. Rotation increased Petitioner's pain. Petitioner received EMS, hot packs, soft tissue massage, ultrasound, and gentle mobilization. (Pet. Ex. 3. p. 31)

On December 26, 2011, Petitioner's work conditioning progress at ATI was evaluated by Mr. Connell. Mr. Connell noted Petitioner was able to progress her lifting tolerances, with an actual overhead lifting tolerance of 20 pounds for three repetitions. Petitioner continued to report her main complaint was increased lower back pain with activities involving lumbar rotation but also reported pain with squatting, prolonged standing and walking. Petitioner's current estimated PDL was Light to Medium. (Pet. Ex. 5. p. 86)

On January 2, 2012, Petitioner's work conditioning progress at ATI was evaluated by Mr. Connell. Mr. Connell noted Petitioner participated as instructed. Mr. Connell noted Petitioner was able to progress her lifting tolerances, with an actual overhead lifting tolerance of 24 pounds for two repetitions. Petitioner was able to lift 50 pounds from floor to chair for six repetitions and lift and carry 40 pounds for 100 feet. Petitioner continued to self-modify activities involving trunk rotation due to subjective complaints of lower back pain. Her PDL was Medium. Mr. Connell recommended discharge from the work conditioning program pending physician reevaluation noting that Petitioner met all functioning lifting tolerance goals and not showing any progression

of positional tolerances for several weeks. (Pet. Ex. 5. p. 95) Petitioner testified it took her about 35 minutes to lift 50 pounds six times during her January 2, 2012 work conditioning session. She testified that in her job as an unloader she would be expected to lift 50 pounds for six repetitions in about three minutes. She testified that she had to self modify her activities during this session due to her low back pain.

On January 3, 2012, Petitioner presented to Dr. Harsoor indicating her pain was down to 3/10, she indicated her left leg numbness and weakness were improving. She continued to have a stiff back. Petitioner indicated her pain worsened with prolonged walking and sitting but got better when lying flat. The notes indicated Petitioner was able to perform all activities of daily living. Petitioner indicated she had plateaued at therapy and that she would like to try another epidural injection. Petitioner indicated her treatments from the physical therapist had not helped her pain. Dr. Harsoor recommended another epidural injection per the IME recommendation. (Pet. Ex. 6. p. 42-44)

That same day, Petitioner presented to Dr. Bermudez. Petitioner complained of pain in her mid and low back at 3/10 and indicated she was attending work conditioning. Dr. Bermudez indicated that, per Dr. Harsoor, Petitioner should remain off work at that time and she was scheduled for an injection on January 13, 2012. Dr. Bermudez further states, "Per Dr. Harsoor, she wants the patient to stop work conditioning prior to getting the injection and she will determine when the patient will go back to work conditioning." On exam, Petitioner's ROM was painful mainly at the end of flexion and extension and she had tenderness throughout the thoracolumbar paraspinal muscles, mainly on the left side. (Pet. Ex. 3. p. 32)

On January 4, 2012, Petitioner's work conditioning progress at ATI was evaluated by Mr. Connell. Mr. Connell indicated Petitioner participated as instructed and had an actual overhead lifting tolerance of 24 pounds for two repetitions. Petitioner continued to self-modify activities involving trunk rotation due to subjective complaints of lower back pain. Petitioner's PDL was medium. Mr. Connell stated, "Petitioner was discharged from Work Conditioning Program by her physician at her follow up appointment." Mr. Connell discharged Petitioner. (Pet. Ex. 5. p. 98)

On January 5, 2012, a job offer was mailed to Laura Hurst, of "desk work," based on Dr. Grear's recommendations. The position offered stated: "to include (but is not limited to) the following: answering the phone." No job description was attached. The hours of the position would be from 4 p.m. to 1 a.m. (Resp. Ex. 7)

On January 10, 2012, Petitioner presented to Dr. Harsoor indicating her pain was about 5/10. Petitioner indicated pain worsened with prolonged walking and sitting. See Pet. Ex. 6 p. 46. Dr. Harsoor administered lumbar epidural steroid injections at L3-4 with trigger point injections, for Petitioner's lumbar disc herniation, and performed epidurography for Petitioner's lumbar radiculopathy. (Pet. Ex. 6 at 46-50)

On January 11, 2012, Petitioner presented to Dr. Harsoor with a continued pain rating of 5/10. Petitioner indicated pain worsened with prolonged walking and sitting. Dr. Harsoor placed her off work until January 30, 2012. (Pet. Ex. 6. p. 52-54)

On January 19, 2012, a job offer was mailed to Laura Hurst, of "desk work," based on Dr. Grear's recommendations. The position offered stated: "to include (but is not limited to) the following: answering the phone." No job description was attached. (Resp. Ex. 4)

On January 23, 2012, Petitioner presented to Dr. Harsoor and indicated her pain had decreased to 4/10 following injections. Petitioner indicated pain worsened with prolonged walking and sitting. Dr. Harsoor recommended a discogram, based on her having multiple disc problems. Dr. Harsoor noted that, as pain is still limiting her function, Petitioner would like to pursue further aggressive treatment. Dr. Harsoor referred

Petitioner to Dr. Barnabas to make a surgical referral. Dr. Harsoor placed Petitioner off work until February 30, 2012, due to pain. (Pet. Ex. 6 p. 55-58) On that same day, Dr. Bermudez referred Petitioner to Dr. Salehi for a surgical consultation. (Pet. Ex. 3 p. 33)

On February 14, 2012, Petitioner presented to Dr. Harsoor for an L3-4, L4-5, and L5-S1 lumbar discogram. Dr. Harsoor noted: moderate resistance at L3-4, L4-5 and L5-S1; dumb bell disc pattern was noted at all levels, with no leak. She further noted Petitioner's concordance of pain as follows: "patient had moderate pain of 7/10 at L4-5, and mild pain at L3-L4 and L5-S1." Dr. Harsoor determined Petitioner had 4/5 concordant pain at L4-L5 level and no concordance at L3-4 or L5-S1. Dr. Harsoor indicated Petitioner would be off work until surgeon's evaluation. (Pet. Ex. 6. p. 62-66)

That same day, Petitioner underwent a post-discogram CT scan of the lumbar spine with Dr. Sasan Pauyvar, M.D. Dr. Pauyvar indicated that at L4-L5, the injected contrast extended to the posterior third of the disc compatible with a grade III radial tear, with a borad based left foraminal disc protrusion with disc material causing moderate left foraminal stenoisis. Dr. Pauyvar further noted a slight amount of contrast extended into the left neural foramen due to a focal annular tear in that region. There was no associated central or right foraminal stenosis. (Pet. Ex. 9. p.3,4)

Petitioner testified that on February 25, 2012, she went to Walmart to turn in her off-work notes from Dr. Harsoor. At that time, she was presented with a job offer of "desk work," based on Dr. Grear's recommendations. The job offer stated: "to include (but is not limited to) the following: answering the phone." No job description was attached. The hours of the position were from 4 p.m. to 1 a.m. Petitioner refused the position and wrote "not refusing to work but I am off on workers comp so cannot work as of now [sic]." (Resp. Ex. 2)

Petitioner testified the job she was offered was to work in the fitting room and answer phones. Petitioner testified she told her manager Denise she was under her doctor's care and could not perform the job they were asking her to perform. She testified that at the time of the offer her pain was increased by prolonged sitting and prolonged standing and that the position most helpful to her pain was lying down or in a prone position with her knees up. Petitioner testified Denise did not indicate Petitioner would be able to lie down during the job.

On cross exam, Petitioner testified the February 25, 2012 offer was to answer phones at the fitting room, and that, although the written offer states "desk work" and previous written offers state "fitting room," "it is not a different job." Upon being questioned whether the "desk work" offer indicates that Dr. Grear released Petitioner to work, she responded, "Yes. But he's not my doctor." Upon being questioned why she didn't try going back to work, she responded, "at the time I could not." She was asked why she didn't want to try and work when work conditioning showed she could lift up to 50 pounds and had improved since January. Petitioner responded, "There was more to it than that. I could not twist. I cannot touch my toes. There is things I cannot do. I was able to do those things if you take them and look at them in that context. It's not the same as doing the job."

On Re-Cross, Petitioner was questioned as to what other duties she would have besides answering the phones, she responded, "The phone is located at the fitting room desk. I would be doing the fitting room."

On February 27, 2012, Petitioner presented to Dr. Harsoor complaining of continued back pain. Petitioner indicated pain worsened with prolonged walking and sitting. Petitioner indicated she would like to pursue further aggressive treatment as her lumbar discogram was significant for L4-5 concordant pain. Petitioner was placed off work pending surgical evaluation. (Pet. Ex. 6 p. 75-77)

On March 2, 2012, Petitioner presented to Dr. Sean Salehi. Petitioner filled out a medical history form and described her symptoms as follows: lower back pain, stiffness, spasms, numbness, loss of flexibility & ROM, and tenderness to touch. Petitioner indicated her symptoms were constant and she had not had similar symptoms previously. Petitioner noted sitting and standing made the pain worst and lying down made the pain better. She further noted twisting movements, stairs, cold weather, and staying in one position too long, also made pain worse. She noted heat and ice made her pain better. Petitioner noted she had pain, weakness and decreased ROM in her muscles/joints; and weakness, numbness, and tingling in her left hip and left leg. Petitioner noted her job was a truck unloader and she had medium and heavy duties, lifting 20-50 pounds and 50-100 pounds. Petitioner noted bed rest provided some relief, physical therapy provided some relief, injections provided some relief, and a brace provided no relief. Petitioner indicated her pain was 5/10 and was located at the lower back, radiating down the left leg. (Pet. Ex. 10 p. 3)

Dr. Salehi reported Petitioner was injured on July 22, 2011 when she was unloading cases onto a pallet in a bending/twisting motion and that after moving about the sixth case she felt a pinching/popping sensation that took her breath away. Dr. Salehi noted Petitioner underwent a course of physical therapy and had three epidural injections, which helped to bring her pain down. He noted that she underwent a course of work conditioning which served only to aggravate her pain. He noted extension worsens her pain, as well as any twisting motions or bending forward to pick up objects. The majority of her pain was constant low back pain with intermittent radiation down into the left leg, sometimes all the way to the foot. Petitioner had numbness in the left lateral thigh, and felt weak in the left leg but denied having any falls. (Pet. Ex. 10 p. 4)

Upon lumbosacral exam, Dr. Salehi noted lumbosacral tenderness and tenderness along the left posterior iliac crest with palpation. Petitioner's ROM: forward flexion to 40 degrees, hyperextension to10 degrees, right lateral bend to 20 degrees, and left lateral bend to 20 degrees. Dr. Salehi noted left sciatic notch tenderness. Upon motor exam, Dr. Salehi noted gait was antalgic and posture was mildly forward flexed. Petitioner had decreased sensation in the left lateral thigh and calf. (Pet. Ex. 10 p. 6)

Dr. Salehi reviewed Petitioner's August 26, 2011 MRI and determined Petitioner had two level disc disease at L3-4 and L4-5 manifested by slight height loss at L3-4 and slight T2 signal loss at both levels, with mild circumferential disc bulge without neural compression. He personally reviewed Petitioner's February 2, 2012 discogram CT and noted an annular tear at L3-4. He reviewed the lumbar discogram report and noted concordant pain at L4-5. (Pet. Ex. 10 p.7)

Dr. Salehi stated Petitioner's mechanical back pain was secondary to the annular tear at L3-L4 and disc degeneration at L4-5. The doctor noted the discgram showed concordant pain at L4-5, but he was also concerned about the degeneration at L3-4 based on the MRI. Dr. Salehi stated that, given the failed course of conservative care, he recommended surgical intervention in the form of an L3-4, L4-5 lateral lumbar fusion with allograft. At that time, Dr. Salehi felt Petitioner could return to work with desk work/light duty capacity with no lifting more than 20lbs, push/pull more than 35lbs., no repetitive bending or twisting at the waist and alternate between sit/stand every 30-45 minutes. She was to follow the restrictions until at least 6 months post-op. (Pet. Ex. 10 p. 7)

On April 20, 2012, Petitioner presented to Dr. Bermudez complaining of pain at 7-8/10, and stating she had difficulty sleeping due to pain and difficulty walking, standing, and climbing. On exam, Petitioner's ROM continued to be painful in all directions of flexion, extension, lateral flexion, and rotation with tenderness into the bilateral paraspinal muscles, and he noted a positive Milgram's test in the lumbar spine. Dr. Bermudez gave Petitioner EMS, hot packs, ultrasound, and soft tissue massage. (Pet. Ex. 3 p. 39)

On May 1, 2012, Petitioner underwent a second Section 12 examination with Dr. Grear. The doctor stated Petitioner had strained her lumbosacral spine in her July 22, 2011 work accident. Dr. Grear indicated patient

was treated with naprosyn, tramadol, and soma which made her sleepy and was discontinued. Dr. Grear stated Petitioner's first injection stopped her pain from radiating into her left leg but that the two subsequent injections provided no therapeutic benefit. He stated Petitioner no longer complained of pain down her leg, but continued to complain of pain in the lower lumbar spine. Dr. Grear reviewed Petitioner's MRI reports. He noted that the discogram revealed some radial tears at L4-5, but no significant extrusion of the disc material and no significant intrinsic pressure on the nerve roots and only mild foraminal stenosis without any clinical complaints of radicular pain. (Resp. Ex. 8. dep #3)

Dr. Grear's phsycial exam revealed Petitioner moved with guarded motion from sitting to standing, trace parspinal muscle spasm, and avoidance response with palpation diffusely throughout her lumbar spine. Petitioner had diminished forward flexion, left and right lateral rotation, hyperextension of approximately 20 degrees secondary to pain. Dr. Grear noted he had no current medical records to review except the CT discogram and his opinions were based on his own physical exam. Dr. Grear determined Petitioner's physical therapy, two epidural injections, and use of Norco, were reasonable and customary. He noted that she should try a nonsteroidal anti-inflammatory medicine. (Resp. Ex. 8. dep. #3)

Dr. Grear stated that, based on his exam and the records he reviewed, that the proposed treatment by Dr. Salehi, including the L3-4 and L4-5 lateral lumbar fusion with allograft was not reasonable and medically necessary. He stated that, based on the MRI and CT discogram, spinal fusion and laminectomy and discectomy in the absence of radicular symptoms would be improbable to result in significant benefit. Dr. Grear stated Petitioner had not yet reached MMI; however, he expected after good conservative management, weight loss, and a home exercise program she should be able to return to full time employment in a medium to light duty position, with no lifting more than 15 pounds from floor to waist and no lifting greater than 10 pounds from waist to above the shoulder level. He anticipated she would reach MMI within eight weeks. Dr. Grear stated Petitioner should be capable of working full time limited to deskwork with frequent ability to change positions. (Resp. Ex. 8. Dep. #3)

On May 29, 2012, Dr. Grear authored a supplemental report. The doctor indicated that his answers to the questions of May 1, 2012 had not changed, after reviewing "further medical records." (Resp. Ex. 8 dep. #4) The Arbitrator notes Dr. Grear did not indicate what medical records he reviewed.

On July 23, 2012, Dr. Salehi authored a report after reviewing Dr. Grear's May 1, 2012 IME report. Dr. Salehi noted that Dr. Grear's opinion was that, based on the MRI and CT discogram, he felt spinal fusion and laminectomy and discectomy in the absence of radicular symptoms would be improbable to result in significant benefit to the patient and that further interventional care and further physical therapy was not necessary. To this, Dr. Salehi responded that Petitioner had low back pain with intermittent radicular symptoms down the left leg into the foot, as indicated in his March 3, 2012 report. He noted she had lumbosacral and posterior iliac crest tenderness with positive left sciatic notch tenderness with decreased sensation in the left lateral thigh and calf. Dr. Salehi stated Petitioner's symptoms are discogenic in nature as a result of the annular tear at two lumbar discs. He stated there is a great deal of evidence in the neurosurgical literature supporting a fusion operation for the diagnosis of discogenic pain unresponsive to medical management, and to say otherwise is not to rely on medical evidence. Dr. Salehi further stated that, even regardless of whether she had lower extremity complaints, her MRI showed two level disc disease at L3-4 and L4-5 with slight height loss at L3-4 and T2 signal loss at both levels. He noted the discogram revealed an annular tear at L3-4 and confirmed Petitioner's source of pain. Lastly, he stated, as she failed conservative treatment and her present complaints had been present for a year since her injury, she is a surgical candidate in the form of an L3-4 and L4-5 lateral lumbar fusion. (Pet. Ex. 11 p. 9)

On July 30, 2012, Petitioner presented to Dr. Harsoor regarding pain at 5/10 in her low back along with numbness and tingling in her feet, which persisted during the prior four weeks. Petitioner indicated pain

worsened with prolonged walking and sitting.Dr. Harsoor noted Petitioner reported being "let go from work." Dr. Harsoor refilled Petitioner's Tramadol and restarted Petitioner's Naproxen prescription. (Pet. Ex. 6. p. 83-85) Dr. Harsoor's records include a blank "lumbar transforaminal injection" form. (Pet. Ex. 6. p. 86) Dr. Harsoor's bill for July 30, 2012, of $126.00, does not include a CPT code for an injection. (Pet. Ex. 6. p. 130) As such, considering no bill was created for an injection on this date, no injection was performed on this date.

On September 5, 2012, Petitioner presented to Dr. Harsoor complaining of persistent pain at 6/10 with numbness and tingling down into her feet. Petitioner indicated pain worsened with prolonged walking and sitting. Petitioner indicated "some acidity from Naproxen." Dr. Harsoor refilled Tramadol, Flexeril, and stopped Naproxen. (Pet. Ex. 6. p. 87-89) Again, Dr. Harsoor's records include a blank form for a lumbar transforaminal injection. (Pet. Ex. 6. p. 90) Dr. Harsoor's bill for September 5, 2012, for $126.00, does not include a CPT code for an injection. (Pet. Ex. 6. p. 131) Considering that no bill was created for an injection on this date, no injection was performed on this date.

On September 6, 2012, Dr. Salehi presented for a deposition. Dr. Salehi testified he specialized in neurological surgery and had been board certified since 2004. (Pet. Ex. 11 p. 4) He testified, to a reasonable degree of medical and surgical certainty that the injury of July 22, 2011, which involved bending, twisting, and lifting resulted in an aggravation of Petitioner's preexisting condition. He testified that the lateral lumbar fusion at L3-4 and L4-5 was the only thing which would help Petitioner. He provided that the recommendation was based on his clinical knowledge, knowledge of the literature, and correlation of the imaging findings. (Pet. Ex. 11 p. 11) He testified that lumbar strains typically resolve within six weeks and ongoing pain would be related to a different diagnosis. He testified Petitioner's conservative treatments were reasonable and necessary. (Pet. Ex. 11 p. 13) On cross, he testified that if a patient demonstrates physical demand level during work conditioning of a medium physical demand level that they would be able to perform medium level work if those activities were sustained and not just a burst of going up to a medium level, causing significant symptoms. (Pet. Ex. 11. p. 21, 22) Dr. Salehi testified Petitioner's degenerative disc disease was asymptomatic and the accident rendered it symptomatic, and she developed an annular tear on top of what she had before. (Pet. Ex. 11 p. 24, 25) Lastly, Dr. Salehi testified his bill had not been paid and that his office had a policy of requiring payment before seeing patients. (Pet. Ex. 11 p. 26)

On October 23, 2012 Dr. Grear presented for a deposition. Dr. Grear testified he became board certified in 1981 and practiced in general orthopedics and that he takes care of the back and operates on all joints but no longer operates on spines. (Resp. Ex. 8 p. 3-5) He testified that, at the time of his November 22, 2011 exam, he had medical records of Dr. Harsoor, physical therapy notes, and the radiographic study from Silver Cross Hospital. (Resp. Ex. 8 p. 10) Dr. Grear testified he was provided with Dr. Salehi's report and the work conditioning records prior to his May 29, 2011 IME addendum. (Resp. Ex. 8 p. 16) On cross, Dr. Grear testified lumbar strains typically resolve in six to twelve weeks and that six months is not unheard of. (Resp. Ex. 8 p. 18) Dr. Grear testified annular tears would never again become "normal." (Resp. Ex. 8 p. 22) Dr. Grear testified annular tears elicit inflammation in the surrounding tissues that leads to pain. Dr. Grear testified a fusion may be appropriate medical treatment to combat mechanical back pain. (Resp. Ex. 8 p. 22-24).

On October 29, 2012, Petitioner presented to Dr. Harsoor complaining of persistent low back pain at 5/10 and numbness and tingling down into her feet. Petitioner indicated pain worsened with prolonged walking and sitting. Dr. Harsoor noted Petitioner was awaiting surgical approval and she refilled Tramadol and recommended continuation of Flexeril and Elavil. Again, Dr. Harsoor's records include a blank form for a lumbar transforaminal injection. (Pet. Ex. 6. p.93-96) Dr. Harsoor's bill for September 5, 2012, for $126.00, does not include a CPT code for an injection. (Pet. Ex. 6. p. 132) The Arbitrator notes that, considering that no bill was created for an injection on this date, no injection was performed on this date. Likewise, Petitioner testified she did not undergo an injection at this time. Petitioner testified Dr. Harsoor placed her off work.

Petitioner testified that prior to July 22, 2011 she had not suffered any back injuries. She further testified that since her accident on July 22, 2011 she has not had any other injuries to her back. She testified that at arbitration that her back pain was a five on a scale of 1-10, due to the long commute. She testified she was driven to arbitration by her fiancé. Petitioner testified she cannot touch her toes, has a hard time shaving her legs, walking up and down stairs, sitting for long periods of time. She testified any twisting motion, like laundry causes pain. She testified it takes her an extremely long time to do the laundry and things that took her minutes now take her hours. She testified she does stretching exercises, uses exercise balls, lays on the floor, takes hot showers, alternates ice and heat for 20 minute intervals, and takes pain medication to relieve her pain.

Petitioner testified she wants to undergo the lumbar fusion recommended by Dr. Salehi. Petitioner testified she would be surprised if Dr. Harsoor's records indicated she was able to perform all activities of daily living.

On cross exam, Petitioner was questioned as to Dr. Salehi's recommendations regarding her work capabilities at his exam on March 2, 2012 and she responded she understood him to mean that she could perform desk work after her surgery. Petitioner testified she has low heels she wears if she is going to be sitting. She provided that she attempted to wear regular heels one day and it was "a totally bad idea." She took them off as soon as she could. However, she has occasionally tried to do it again. She testified she has learned to live with wearing flats and mostly flip flops since she cannot tie shoes and cannot reach her toes.

Respondent's witness Ms. Jernigan testified she is the co-manager of Walmart and has held the position for three years. She testified she handles workers' compensation claims. She testified she had employees who were taking medication for allergies, migraines, stomach aches, and acid reflux who were allowed to take their medication upon letting managers know about the medication and providing medical paperwork. She testified the deskwork offered to Petitioner is in the front cash office where she would be sitting at a desk, answering phones, and taking messages, and not working the fitting room. She testified she told Petitioner if she did not accept the February 25, 2012 offer she was accepting her termination. She also testified she saw Petitioner walking around the store in heels for about 30 minutes.

Ms. Jernigan testified it was store policy to include a job description with bona fide job offers, and job descriptions were attached when Petitioner was offered positions as unloader and as fitting room attendant. She testified she did not attach any job description on February 25, 2012 when she indicated to Petitioner she would be doing desk work. Further, she testified she would not allow an employee to take a medication that caused her to sleep for 15 hours. Ms. Jernigan admitted she had Dr. Grear's report in her possession at the time of the Februrary 25, 2012 light duty offer. She testified that on a busy day an unloader would be moving merchandise more than six times throughout an eight-hour day. Lastly, she testified that, regardless of how much weight was lifted in the unloading job, an unloader would be required to twist and bend.

On rebuttal testimony, Petitioner testified that on February 25, 2012, she was not told she would be working in the cash room but was told she would be working at the fitting room answering phones. She testified she was not told she would be accommodated with regard to drowsiness caused by her medication.

With respect to issue (F) Is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator finds as follows:

Petitioner testified, without rebuttal, that before the accident on July 22, 2011, she never previously injured her low back. She additionally testified, without rebuttal, that since the date of accident, she has not re-injured her low back. The medical records corroborate Petitioner's testimony.

The Arbitrator finds that Petitioner's testimony was credible and that she provided a consistent history of the accident. The Arbitrator finds it more likely than not that Petitioner's asymptomatic discs at the L3-4 and L4-5 levels were aggravated and became symptomatic after the lifting accident.

After hearing the testimonies of Petitioner and Denise Jernigan; reading the testimonies of Dr. Salehi and Dr. Grear; and reviewing the exhibits submitted, the Arbitrator hereby finds that Petitioner's present condition of ill-being with regard to her low back condition is causally related to the injuries sustained on July 22, 2011.

With respect to (J.) Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services; and (K.) Is Petitioner entitled to any prospective medical care, the Arbitrator finds as follows:

Having reconciled that Petitioner's condition of ill-being is causally related to the accident herein, the Arbitrator hereby finds the medical services that were provided to Petitioner were reasonable and necessary.

Petitioner alleges several outstanding medical bills. The Arbitrator finds that Respondent has not paid all appropriate charges for the reasonable and necessary medical services, and therefore orders Respondent to pay the following amounts, as provided by Section 8.2:

Name of Provider	Total Bills	Dates of Service
Ex. 3: Dr. Ravi Barnabas	$2,881.57 (Alivio)	8/26/2011-6/4/2012
Dr. Ruben Bermudez	$342.38 (Herron)	
Ex. 4: Delaware Place MRI	$320.00	8/26/2011
Ex. 6: Dr. Sue Harsoor	$18,193.00	9/1/2011-10/29/2012
Ex. 7: Rogers Park One Day Surgery	$18,974.74	10/11/2011-2/14/2012
Ex. 8: Advanced Laboratory Services	$2,004.00	11/9/2011-4/17/2012
Ex. 9: Lakeshore Open MRI	$1,245.55	2/14/2012
Ex. 10: Dr. Sean Salehi	$525.00	3/2/2012
TOTAL:	**$44,486.24**	

Prospective medical services

Additionally, Petitioner testified at hearing that she wishes to undergo the L3-4, L4-5 fusion proposed by Dr. Salehi. The Arbitrator finds that Dr. Salehi's testimony was more persuasive than the testimony of Dr. Grear. The testimony and evidence presented support an order for the fusion, as Petitioner has (1) failed conservative treatment, and (2) her pain is discogenic in nature. Thus, the Arbitrator orders Respondent to authorize the proposed surgery and the necessary subsequent medical treatment until Petitioner reaches maximum medical improvement.

With respect to issue (K.) Is Petitioner entitled to temporary total disability, the Arbitrator finds as follows:

Temporary Total Disability compensation is provided for in section 8(b) of the Workers' Compensation Act, which provides, "[W]eekly compensation *** shall be paid *** as long as the total temporary incapacity lasts," which the Courts have interpreted to mean that an employee is temporarily totally incapacitated from the time an injury incapacitates him for work until such time as he is as far recovered or restored as the permanent character of his injury will permit. Further, the period during which a claimant is temporarily totally disabled is a question of fact to be resolved by the Commission. Archer Daniels Midland Co., 138 Ill. 2d at 118-19; McKay Plating Co. v. Industrial Comm'n, 91 Ill. 2d 198 (1982).

Dr. Harsoor placed Petitioner off work through the date of arbitration, November 19, 2012, due to her low back pain. No physical therapist ever indicated Petitioner was rehabilitated to the point of being able to return as an unloader. The records indicate that Petitioner continued to self modify activities involving trunk rotation due to lower back pain. It was this stagnation that indicated to the physical therapist that Petitioner should be released from work conditioning. The physical therapist did not indicate Petitioner was able to work full duty. Rather, the physical therapist indicated Petitioner's treating physician discontinued work conditioning in order to seek other methods of relieving Petitioner's pain. Further, Petitioner testified it took 35 minutes to lift 50 pounds six times during work conditioning, whereas her job as an unloader required her to lift 50 pounds six times in about three minutes. Additionally, her ability to "team lift" items weighing hundreds of pounds was never tested. Clearly she was incapable of returning to her position as an unloader.

Records indicate Petitioner told every doctor, including Drs. Barnabas, Harsoor, Salehi, and Grear, her pain was worst with prolonged sitting and best when lying down. Petitioner likewise testified. Petitioner's work conditioning did not test her ability to sit at a desk for eight hours. Work conditioning was geared toward achieving Petitioner's prior lifting, bending, twisting, and endurance abilities. An ability to lift 50 pounds has no bearing on the ability of an individual with a low back injury to sit in a chair for eight hours. Moreover, assuming Petitioner was offered the fitting room job on February 25, 2012, she would be required to perform intermittent bending, twisting, and lifting—activities which caused pain and were not authorized by Dr. Grear or Dr. Salehi. Petitioner testified her pain medication caused her to be drowsy to the point of sleeping up to 16 hours per day. Moreover, Ms. Jernigan admitted that, regardless of medications, employees would not be permitted to sleep on the job.

The Arbitrator further notes that on multiple occasions prior to January 3, 2012, it was noted Petitioner was able to perform all activities of daily living. Subsequent thereto the notes do not indicate whether Petitioner was able to perform all activities of daily living. However, the notes consistently note Petitioner complaining of persistent low back pain; numbness and tingling down into her feet; and her pain worsened with prolonged walking and sitting.

Thus, after hearing the testimony of Petitioner and Ms. Jernigan, reviewing testimony of Drs. Salehi and Grear, and reviewing the exhibits submitted, the Arbitrator hereby finds Petitioner was temporarily totally disabled from 7/23/2011 to 7/29/2011, and from 8/20/2011 (the day Dr. Niemega excused Petitioner from work) to 11/19/2012, for a period of 66-1/7ths weeks.

STATE OF ILLINOIS)
) SS.
COUNTY OF WILL)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse Accident	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

David Flesner,
Petitioner,

vs.

NO: 11 WC 32917

14IWCC0096

Thomas G. Todd, Inc., d/b/a Nancy's Pizzeria,
Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection and medical expenses both incurred and prospective and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Petitioner testified that he worked for the Respondent for 36 years. He has been manager of Nancy's Pizzeria for 16 years. His job duties are to make the dough and sauce. The flour comes in 50-pound bags. You put the flour into a bowl with water and then cut it up into 17-ounce pieces. The sauce comes in two cases per bag. There are six cans per case and they weigh a couple of pounds each. (Transcript Pgs. 8-11)

Petitioner further testified that he makes the dough everyday and the sauce every two days. (Transcript Pgs. 11-12)

Petitioner indicated that he would get a pinching or pulling and they would come and go at different times whether he was working or at home. When he would pick up the 50-pound bag of dough, once in a while he would feel a pulling sensation in the abdominal area. (Transcript Pgs. 13-14)

14IWCC0096

The Commission adopts the testimony of Dr. Coe over that of Dr. Palacci. Dr. Coe believed that a causal relationship existed between the repetitive pulling sensations Petitioner testified to and the umbilical hernia. (Petitioner Exhibit 5)

Therefore, the Commission finds that Petitioner has proven that his umbilical hernia was the result or was aggravated by the repetitive trauma the Petitioner was exposed to during his job as manager of Nancy's Pizzeria on June 1, 2011.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $250.00 for medical expenses under §8(a) of the Act and §8-2 and that Respondent is liable to pay for all related prospective treatment including surgery as proposed by Drs. Milgram and Popatopolous.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $5,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:
121013 FEB 1 1 2014
CJD/hsf
049

Charles J. DeVriendt

Michael J. Brennan

DISSENT

The arbitrator wrote an excellent decision accurately describing the evidence upon which he based his decision. I agree with Arbitrator Falcioni's analysis and conclusions. I would affirm and adopt the arbitrator's decision.

With respect, I dissent.

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

FLESNER, DAVID
Employee/Petitioner

Case# **11WC032917**

THOMAS G TODD INC
Employer/Respondent

14IWCC0096

On 3/8/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0009 ANESI OZMON RODIN NOVAK KOHEN
ADAM F RATHERS
161 N CLARK ST 21ST FL
CHICAGO, IL 60601

0507 RUSIN MACIOROWSKI & FRIEDMAN LTD
MARK P RUSIN
10 S RIVERSIDE PLZ SUITE 1530
CHICAGO, IL 60606

STATE OF ILLINOIS)
)SS.
COUNTY OF WILL)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

14IWCC0096

David Flesner
Employee/Petitioner

Case # 11 WC 32917

v.

Consolidated cases:

Thomas G. Todd, Inc.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Arbitrator Falcioni, Arbitrator of the Commission, in the city of Geneva, on 2/22/13. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. ☐ Was there an employee-employer relationship?

C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to Respondent?

F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?

G. ☐ What were Petitioner's earnings?

H. ☐ What was Petitioner's age at the time of the accident?

I. ☐ What was Petitioner's marital status at the time of the accident?

J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

K. ☐ Is Petitioner entitled to any prospective medical care?

L. ☐ What temporary benefits are in dispute?

☐ TPD ☐ Maintenance ☐ TTD

M. ☐ Should penalties or fees be imposed upon Respondent?

N. ☐ Is Respondent due any credit?

O. ☐ Other _____

14IWCC0096

FINDINGS

On the date of accident, 6-1-11, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $N/A; the average weekly wage was $N/A.

On the date of accident, Petitioner was N/A years of age, single, with 0 children under 18.

Respondent ***has not*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00.

Respondent is entitled to a credit of $0.00 under Section 8(j) of the Act.

ORDER

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a *Petition for Review* is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

March 6, 2013
Date

ICArbDec19(b) p. 2

MAR 8 - 2013

In support of the Arbitrator's decision relating to (D) Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?, and (F) Is Petitioner's current condition of ill-being causally related to the injury?, the Arbitrator finds the following facts:

Petitioner is the store manager for a Nancy's Pizza location. He alleges an accident on June 1, 2011. Petitioner did not testify as to involvement in any work accident or unusual event that date. He testified to being diagnosed with a hernia and that after June 1, 2011 he avoided heavy lifting as he did not want to injure himself. Petitioner did not offer into evidence any medical reports or medical records documenting care or treatment for a hernia condition on or about June 1, 2011. Petitioner did not offer any medical records into evidence which show he was restricted from performing any work activities on June 1, 2011 or thereafter. Petitioner acknowledged he continued working his normal position after June 1, 2011.

Petitioner testified that part of his job as a manager involved making dough and sauce. Petitioner did not testify his work activities in making dough and sauce were repetitive in nature. He admitted to making dough only once a day and sauce every two days. Petitioner stated making dough involved lifting a 50 pound bag of flour into a bowl, but did not indicate this was necessary more than once a day. Petitioner testified that making sauce involved lifting a case of cans which weighed about 25 pounds, but acknowledged he would not make sauce on a daily basis, but every other day. By Petitioner's own testimony, he would not have been required to lift a case of cans more than one time every two days. Petitioner did not testify to any other job duties of significance. He did not testify to any heavy job duties on a repetitive basis.

The medical records in evidence show Petitioner had visits with Dr. Papadopoulos, an internist, from November 16, 2010 through January 31, 2011. Petitioner testified he saw Dr. Papadopoulos to be evaluated for diabetes. However, according to Dr. Papadopoulos' records, Petitioner was first seen November 16, 2010, primarily due to foot pain. During the course of

the exam this date, Dr. Papadopoulos noted an umbilical hernia. The doctor's records do not indicate the hernia related to any work accident or work activity. The records do not indicate any specific treatment was rendered or prescribed for this condition. Dr. Papadopoulos did not authorize Petitioner off work on account of this condition or restrict his work capabilities.

Petitioner had further visits with Dr. Papadopoulos on November 30, 2010, December 27, 2010 and January 31, 2011, but no further mention is made of a hernia condition. There is no indication in Dr. Papadopoulos' further notes that Petitioner required further care on account of a hernia condition or that the hernia condition had any relationship to a work accident or work activities.

There is no further medical record of treatment in evidence until a visit with Dr. Milgram, Petitioner's primary care provider, on November 8, 2011. By history, Petitioner reported first noticing an umbilical hernia in December, apparently referring to December of 2010. Petitioner is 5'6" tall. Dr. Milgram noted Petitioner weighed 264 pounds on November 8, 2011. According to Dr. Papadopoulos' records, Petitioner weighed 248 pounds one year earlier in November 2010. Thus, Petitioner had gained 16 pounds in the past year. By history, Petitioner reported the hernia protrusion had gotten slightly bigger. He denied any sharp pains whatsoever. He reported only occasional discomfort, which Petitioner specifically denied was related to any physical activities. Petitioner did not report the hernia condition related to any work accident or work activities. Dr. Milgram diagnosed an umbilical hernia and advised Petitioner to see a surgeon for evaluation.

Petitioner has had further visits with Dr. Milgram throughout 2012 for various medical problems, but the doctor's records do not indicate petitioner has received additional treatment on account of a hernia condition.

At the request of Petitioner, Petitioner was examined by Dr. Coe on March 27, 2012. Dr. Coe stated a causal relationship existed between repetitive abdominal wall strain injuries suffered by Petitioner at work on June 1, 2011 and his hernia condition. However, Dr. Coe admitted the treating medical records do not support a contention that Petitioner's hernia condition is related to any work accident or work activities. (See PX 5, page 32). Further, the history obtained by Dr. Coe is inaccurate. Petitioner did not even testify as to involvement in any repetitive work activities or unusual event on June 1, 2011. Further, Dr. Coe admitted that Petitioner is obese with a significantly elevated body mass index. Dr. Coe admitted that obesity is a risk factor in the development of hernias and makes Petitioner prone to developing a hernia. (PX 5, page 27).

At the request of Respondent, Petitioner was examined by Dr. Palacci on August 23, 2012. Dr. Palacci examined Petitioner and reviewed pertinent medical records including those of Dr. Milgram and Dr. Papadopoulos. Dr. Palacci noted Petitioner was morbidly obese. Dr. Palacci stated Petitioner's large protuberant abdomen predisposed him to development of an umbilical hernia. Dr. Palacci stated the medical records did not support Petitioner's hernia condition related to any work accident or activities. The doctor noted Petitioner never reported a traumatic event and Petitioner's condition was likely secondary to his morbid obesity.

The Arbitrator finds Petitioner failed to prove he sustained accidental injuries which arose out of and in the course of his employment on June 1, 2011 and fail to prove his hernia condition is causally related to an alleged accident of June 1, 2011. Petitioner did not testify as to any work accident on June 1, 2011 or repetitive work activities which constitute a compensable work accident. The medical records do not support a contention that Petitioner sustained a compensable work accident. The medical records in evidence do not support Petitioner's allegation that his hernia condition is related to any work accident or work activities.

In fact, the records indicate Petitioner specifically advised the treating doctor that his abdominal discomfort was not related to any physical activities. The Arbitrator has reviewed the reports and testimony of both Dr. Palacci and Dr. Coe. The Arbitrator finds the opinions of Dr. Palacci more credible that Petitioner's hernia condition is not related to a work accident of June 1, 2011 or work activities. The claim for compensation is denied. All other issues are therefore rendered moot.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Popwoczak,

Petitioner,

vs.

NO: 07 WC 1995

14IWCC0097

Rite Way Tile & Carpet,

Respondent,

DECISION AND OPINION ON REMAND

This matter is before the Commission on Circuit Court Judge Patrick J. Sherlock's remand of the Commission's decision, which was issued on August 24, 2012. In that remand, the Judge affirmed the decision of the Commission in regards to penalties and fees under §19(k) and (l) and §16 attorneys' fees. The Judge also affirmed the Commission in regard to their finding of permanent partial disability. However, the Court reversed the Commission's finding that Petitioner's current condition of ill being was causally connected to the original accident of December 11, 2006 and further reverses the Commission's finding that Petitioner was entitled to temporary total disability payments from April 7, 2007 through February 7, 2011.

IT IS THEREFORE ORDERED BY THE COMMISSION based on the remand from Judge Patrick J. Sherlock that Respondent does not have to pay the Petitioner any temporary total disability payments under §8(b) of the Act as ordered by the Commission in the attached decision.

IT IS FURTHER ORDERED BY THE COMMISSION that based on the remand of Judge Patrick J. Sherlock there was no causal connection between the Petitioner's condition of ill being at the time of the second arbitration hearing and the accident, which occurred on December

14IWCC0097

11, 2006.The remainder of the attached decision is affirmed.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $26,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 1 1 2014

Charles J. DeVriendt

Daniel R. Donohoo

Ruth W. White

HSF
R: 12/4/13
049

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☒ Reverse Causal connection	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify up	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Richard Popowczak,

Petitioner,

vs.

NO: 07 WC 1995

14IWCC0097

Rite Way Tile & Carpet,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, permanent disability, credit and penalties and fees and being advised of the facts and law, reverses the Decision of the Arbitrator in regards to causal connection and increases the amount of temporary total disability due and owing the Petitioner as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Arbitrator relied on the opinion of the independent medical examiner, Dr. Mather, in finding that Petitioner's current condition of ill being was not related to the original accident. (Respondent Exhibit 2)The Commission finds that this opinion runs counter to the Commission's previous decision affirming the finding that Petitioner suffered a strain and an aggravation of a pre-existing condition of spondylolisthesis. Therefore, Petitioner's current condition of ill being is causally connected to the original accident.

The Commission finds that Petitioner is entitled to temporary total disability until February 7, 2011. According to the Chicago Tribune and other internet media outlets it would appear Petitioner was able to perform some type of work. (Respondent Exhibit 7) Although Petitioner offered off work slips from Dr. Dam, it does not appear that the Doctor provided these work slips after actually examining the Petitioner. (Petitioner Exhibit 5)

14IWCC0097

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $455.52 per week for a period of 200 2/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $409.97 per week for a period of 50 weeks, as provided in §8(d-2) of the Act, for the reason that the injuries sustained caused the loss of use to the person as a whole to the extent of 10%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $5,063.36 for medical expenses under §8(a) of the Act. Respondent shall further reimburse Petitioner for out of pocket expenses in the amount of $378.02

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $39,300.00. The probable cost of the record to be filed as return to Summons is the sum of $35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED: AUG -7 2012

Charles J. DeVriendt

Yolaine Dauphin

Yolaine Dauphin

Ruth W. White

Ruth W. White

HSF
O: 6/26/12
049

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

VICKY PARAS,

Petitioner,

vs.

NO: 04 WC 59273

14IWCC0098

MOTOROLA, INC.,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, occupational disease, causal connection, medical expenses, temporary total disability, and "causal as to the carpal tunnel," and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission notes that the Arbitrator's internet search was improper and beyond the evidence contained in the record. However, this error was harmless since this additional information was not necessary for the Arbitrator to reach the appropriate conclusions on the issues in this case.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 17, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired

without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED:
o012214
CJD/se
049

FEB 11 2014

Michael P. Latz

Ruth W. White

DISSENTING OPINION

I respectfully dissent and find that the testimony of Petitioner was credible as were the causation opinions of Dr. Stamelos, Dr. Williams, and Dr. Chmell. Respondent's Section 12 Dr. Fernandez opined that Petitioner's job duties did not contribute to or aggravate her bilateral carpal tunnel syndrome (CTS) because he reviewed her job description and a video. However, his testimony does not seem to be based on the actual facts of this case. Petitioner's undisputed testimony was that the video was not representative of her work duties because it did not show "manual tune" or "repair." (T.24). "Manual tune" involved using small screwdrivers and required Petitioner to "turn [her] fingers all day long." (T.26). Petitioner testified that she spent 10 hours a day, 6 days a week doing that job and she noticed pain, numbness, and swelling in her hands while doing it. (T.21, 27). Petitioner also did other jobs including "laser trim," "pick and place," and "inspection and repair." (T.22).

Although the video shows the job of "laser trimming," Petitioner testified that she operated four machines at once while the video only showed workers doing one. (T.150). Petitioner testified that nobody else worked on four machines. (T.30). Petitioner testified that she also worked in the "receiver line," which is not shown on the video, and used a pneumatic screwdriver which involved applying 15 to 20 pounds of pressure. (T.67). Petitioner also testified that the video didn't show pliers being used to cut some of the circuit boards. The video only showed work on "the smallest boards." (T.149). When Petitioner was returned to work with light duty restrictions, she was put in "inspection" for only two weeks and then Respondent put her back in "manual tune." (T.39).

Petitioner credibly testified that her hands were hurting her and she had numbness in her fingers in 2001 but she thought it was related to her neck. (T.33). This is supported by the medical records and testimony of her treating physician, Dr. Stamelos, that Petitioner was

complaining of pain in her left hand and fingers along with numbness at that time. The first mention of right hand numbness and tingling was several months later on March 20, 2002, after Petitioner had been off work, and at a time when Dr. Stamelos noted that her neck and bilateral shoulder pain were getting better. This lends credibility to his testimony that Petitioner's complaints have been similar since the very beginning, including numbness and tingling in both hands (Px12 at 8) and that Petitioner has never stopped complaining about her hands (Id. at 13), but he was more focused on her cervical and shoulder problems because those were more serious (Id. at 42). He testified that Petitioner has double crush syndrome and that she is the "poster girl" for repetitive motion carpal tunnel disease. (Id. at 29). He is "positive" that Petitioner's work activities contributed to or caused her carpal tunnel. (Id. at 36).

Analyzing the testimony of Respondent's Dr. Fernandez in more detail, he testified that Petitioner's pain behavior was not significantly beyond her objective findings and that she does have a bad case of bilateral CTS with the right being much more severe than the left. (Rx7 at 12, 16). He did not believe that Petitioner's work duties, even if done for 27 years, would contribute to CTS and felt that her condition was "idiopathic." However, he did admit that her symptoms "manifested" while she did her job. (Id. at 20). Even though Petitioner's symptoms were worse when she was working, he did not believe that this meant there was a causal connection. On cross examination, he admitted that once someone has CTS, the symptoms can worsen over time even if they aren't working. He also admitted that if the job description and video were not all inclusive and she did, in fact, have to use vibratory tools, pinch/grasp, and press things into place, this would be important in his determination of causation. (Id. at 26). He opined that if Petitioner was exposed to heavy gripping, grasping, using tools on a repetitive basis, and certain vibratory tools, "of course those could be contributory factors considered causal to" CTS. (Id. at 29). He also opined that Petitioner absolutely needs surgery.

In my opinion, Dr. Fernandez's opinion is based on an incomplete understanding of Petitioner's job and should be discounted for that reason. Although the Arbitrator found the opinions of Petitioner's own doctors to be faulty for the same reason, she believed Dr. Fernandez because he viewed the video and reviewed the job description. However, as discussed above, this is immaterial when the video does not show all of Petitioner's job duties and particularly does not show the most strenuous ones.

In addition to Dr. Stamelos, Petitioner was examined by Dr. Williams who felt that there was a significant relationship between her work and her carpal tunnel syndrome. (Px13 at 13). Dr. Chmell also performed an examination and records review and agreed that there was a causal relationship. (Px14 at 17).

Based on the above and a review of the record as a whole, I would reverse the Arbitrator's decision on the issues of accident and causation and would find that Petitioner's bilateral CTS are causally related to the initial accident on October 10, 2001.

Charles J. DeVriendt

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

PARAS, VICKY
Employee/Petitioner

Case# **04WC059273**

02WC011336

14IWCC0098

MOTOROLA
Employer/Respondent

On 1/17/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0006 LEO ALT
221 N LASALLE ST
SUITE 2014
CHICAGO, IL 60601-1407

1120 BRADY CONNOLLY & MASUDA PC
BEVERLY N MASUDA
ONE N LASALLE ST SUITE 1000
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

14IWCC0098

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Vicky Paras
Employee/Petitioner

v.

Motorola
Employer/Respondent

Case # 04 WC 59273

Consolidated cases: 02 WC 11336

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Robert G. Lammie**, Arbitrator of the Commission, in the city of **Chicago**, on **June 16, 2011** and the case was later re-assigned and proceedings were concluded by the Honorable **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Chicago**, on **June 12, 2012, July 24, 2012,** and **October 29, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **19(b), 8(a)**

FINDINGS

14IWCC0098

On the date of accident, **September 23, 2004**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident as explained *infra.*

In the year preceding the injury, Petitioner earned $**41,572.96**; the average weekly wage was $**799.48**.

On the date of accident, Petitioner was **50** years of age, ***married*** with **no** dependent children.

Respondent ***has*** paid all reasonable and necessary charges for all reasonable and necessary medical services as explained *infra.*

Respondent shall be given a credit of $**58,095.91** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**58,095.91**.

Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

A consolidated hearing was held in Petitioner's consolidated cases. With the exception of the temporary total disability/maintenance benefits addressed in this decision, the Arbitrator denies any additional award beyond what was made in the Arbitrator's decision in Case No. 02 WC 11336 as a result of Petitioner's aggravating injury on September 23, 2004.

Temporary Total Disability/Maintenance Benefits

As explained more fully in the Arbitration Decision Addendum, the Arbitrator denies Petitioner's claim for temporary total disability or maintenance benefits after March 9, 2009 and orders that Respondent shall pay Petitioner two days of unpaid maintenance benefits for March 6, 2009 and March 9, 2009 as provided in Section 8(a) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

January 16, 2013
Date

JAN 17 2013

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*
19(b)

Vicky Paras
Employee/Petitioner

v.

Motorola
Employer/Respondent

Case # **04** WC **59273**

Consolidated cases: **02** WC **11336**

FINDINGS OF FACT

The parties participated in a consolidated hearing on June 16, 2011 before Arbitrator Lammie at which time all live testimonial evidence was presented pursuant to Petitioner's Section 19(b) and Section 8(a) motion. Subsequently, these matters were reassigned to the undersigned Arbitrator to conclude the presentation of evidence and render a decision on the issues presented. The Arbitrator finds on the issues presented at trial as stated herein and notes the Arbitrator's concurrent decision rendered in Case No. 02 WC 11336.

Background

Vicky Paras ("Petitioner") testified that she emigrated from Greece in May of 1974 after completing the American equivalent of the first year of high school. June 16, 2011 Arbitration Hearing Transcript ("Tr. pp.") 11-12. Her primary language is Greek and she taught herself English. Tr. pp. 12-13. Petitioner is right-hand dominant. Petitioner's Exhibit ("PX") 5.

Petitioner was employed with Respondent since 1976 through her first date of accident[1]. Tr. pp. 10-12. Petitioner testified that her first job in the United States was with Respondent in Franklin Park[, Illinois] and that she worked with tiny crystals used in watches for a couple of years. Tr. pp. 12-14. Thereafter, Petitioner moved to Schaumburg[, Illinois] in 1978 and worked in parts and then in crystals. Tr. p. 14.

Petitioner testified that she never filed a workers' compensation claim prior to these claims, that she was never sick, and that she worked seven days a week. Tr. p. 15. She also testified that she was never treated for any neck, back, arm or hand condition prior to October of 2001, and that she never had occasion to go to Respondent's clinic or medical department. Tr. p. 15. Petitioner further testified that she did not know what carpal tunnel was prior to 2001 and that it was not until she came under the care of Dr. Stamelos that she understood that she might have carpal tunnel. Tr. p. 27.

On cross examination, Petitioner testified that she could not remember if she only claimed an injury to her left shoulder when she originally filed her workers' compensation claim in 2002, but also acknowledged that her original application for adjustment of claim filed by her prior attorney referred to an injury due to pushing and pulling, which resulted in injury to the left shoulder only. Tr. pp. 73-76; Respondent's Exhibit ("RX") 1. Petitioner's Amended Application for Adjustment of Claim dated March 16, 2004 reflects a pushing and pulling injury to the "left shoulder, neck, arms, hands, etc." RX2.

[1] While Petitioner testified that she worked through October of 1991, the Arbitrator notes that the undisputed date of accident is October 10, 2001. Arbitrator's Exhibit ("AX") 1.

Petitioner further testified on cross examination that her original application for adjustment of claim filed on March 16, 2004 by her prior attorney again referred to an injury sustained on October 10, 2001 due to pushing and pulling, resulting in injury to the left shoulder, neck, arms, and hands. Tr. pp. 115-116; RX2. On re-direct examination, Petitioner testified that her former attorneys filed an amended application on her behalf after she advised them of what her doctors had been telling her. Tr. pp. 140-142. Petitioner also testified that she did not remember exactly what she was doing on the date of injury; she was either in inspection or laser and she believed that she was in laser half of the day and elsewhere for the remainder of the day. Tr. p. 113. She further testified on re-direct examination that her pain was worse after her second injury in 2004 and that it was localized in the upper back, shoulder, and down to her hand. Tr. pp. 148-149.

The Arbitrator notes that no original or amended application for adjustment of claim in the Commission's files in both of Petitioner's cases reflect any injury sustained as a result of repetitive trauma.

Petitioner's Job Duties

Petitioner testified that she was originally assigned to "manual tune" and had been in that position for several years prior to 2001. Tr. pp. 17-21. This position was in the same department as "laser, pick and place, inspection and repair." Tr. p. 20. Petitioner estimated that she worked in manual tune 80% of the time, approximately 10 hours a day, 6 days a week. Tr. pp. 20-22. Petitioner testified that the majority of the remainder of her time was spent working as the "laser" person. Tr. pp. 22-23. Otherwise, Petitioner worked filling in other positions including "pick and place" and "inspection and repair." Tr. p. 23. On cross examination, Petitioner testified that prior to her injury in October of 2001 she also worked in an area called "manual kits." Tr. p. 76.

Petitioner testified that the "laser" position involved using another, more modern [computerized] machine; there she would move around a mouse with little buttons to make cuts into certain places on the board. Tr. pp. 27-28. While in this position, Petitioner testified that she noticed numbness, swelling, and that her hands were hurting. Tr. p. 27.

On cross examination, Petitioner testified that she would stand in front of a computer with a keyboard and tune small, thin circuit boards; to do this, she would take the circuit board out of one box, adjust the circuit board to match the [computer] screen, and then place the completed circuit board in another box. Tr. pp. 97-99. Petitioner testified that the circuit boards in the laser position are bigger than those in manual tune. Tr. pp. 100. She further testified that there are different lasering processes for different boards, but the four machines on which she worked were all the same. Tr. pp. 101-103.

Petitioner testified that she worked in laser approximately 8-10 hours per day, 4-5 days per week in 2002 and 2003. Tr. p. 106. Petitioner testified that Respondent's Exhibit 4 was not representative of what she did when she worked the laser position because it showed the employees operating less than four laser machines simultaneously like she did by going from one machine to another and "[j]umping like crazy, around." Tr. pp. 28-30, 150. Petitioner also testified that she only uses the mouse in this position. Tr. pp. 103-104.

Petitioner further testified that Respondent's Exhibit 4 did not show manual tune or repair or inspection. Tr. pp. 24-25, 137. Petitioner testified that manual tune involved using a small tool that was similar to a screwdriver on small circuit boards of differing sizes and that she would turn her fingers all day long around, forward, and backwards. Tr. pp. 26, 66, 104. Petitioner testified that she also worked with an air gun using 15-20 pounds of pressure to close transreceivers with the screws and later clarified that she did not use this tool while in manual

tune, but rather while she was in repairs. Tr. pp. 67-68, 105. Then she would input information into a computer that could either pass or reject the [circuit] board. Tr. p. 26.

Petitioner also worked in a quality control inspection job (a.k.a. FQA). Tr. pp. 107-108. Petitioner testified that she was seated in this position and that varying sizes and types of thin circuit board sheets would come down to her on a conveyor belt and she would use tools including a tweezers, brush, and pliers to inspect, clean, and place the circuit boards in a box. Tr. pp. 108-110. On re-direct examination Petitioner testified that the pliers she used were not reflected in Respondent's Exhibit 4 and that it only showed the smallest [circuit] boards. Tr. pp. 149-150.

Job Descriptions

Petitioner's line assembly operator job description in Respondent's microcircuits group dated September 22, 2004 reflects that an employee is rotated every two weeks. PX2. Some of the tasks that Petitioner performed required the following: (1) ability to assemble small components into ceramic substrates using tweezers (line assembly); (2) ability to sit and look at small parts under a microscope for eight hours a day (FQA); (3) ability to stand/sit for long periods of time (mostly sitting); and (4) ability to lift up to 15 pounds "(mostly related to fixtures - at the time [Petitioner] was working on Manual tuning and boards weighed about 1 to 2 pounds)[.]" *Id.* The time spent on each task depended on the job and was approximately 5 to 10 min. *Id.* The tools required to perform the job (both manual and power) included tweezers, a hand torque set 15 pounds, and tuning tools for the manual tuning position. *Id.* Petitioner was also required to be able to lift up to 15 pounds. *Id.* The Arbitrator notes that this job description appears to have been created in response to a request about Petitioner's specific job duties.

An internal job description analyzed as of December 28, 2005 and entitled "Physical Demand Documentation" delineates the functions and physical activities required by the FQA, pick and place, and laser trim positions. PX2; RX11. FQA is a quality assurance inspection position. *Id.* The purpose of the pick & place position is to place components on a circuit board. *Id.* The purpose of the laser position is to utilize a machine that automatically trims excess solder or other material from circuit boards. *Id.* All three positions have essential functions that include visual inspection, inspection with use of a powered microscope, utilizing tweezers/picks/fingers to place components onto circuit boards, and picking up trays of circuit boards (weighing approximately 5 to 8 pounds) to trim boards where the employee determines how many boards to place on the tray. *Id.* The physical requirements of the positions are as follows:

	Laser Trim	FQA	Pick & Place
Standing	Occasionally (30% or less of shift)	None	None
Sitting	Constantly (70% of shift)	Constantly (90% of shift)	Constantly (90% of shift)
Walking	Rarely (less than 5% of shift)	"	"
Lifting	Rarely (less than 5% of shift); lifts trays from rack that range in height from 42"-64" on rare basis & lifts trays of boards weighing 5-8 pounds as determined by the employee and how many boards the put on the tray	"	"
Carrying	Rarely (less than 5% of shift)	"	"
Pushing/	Rarely (less than 5% of shift);	"	"

pulling	pushes trays into fixtures with minimal force
Reaching	Infrequently (less than 10% of shift); transferring trays from the rack requires reaching down to 20" and up to 64"; placing boards in fixture requires reaching 15" from body at 42" height; activation button is 20" reach

Id. In addition, repetitive hand motions include bilateral simple grasping, firm grasping, and fine manipulation. *Id.* The use of picks and tweezers also requires fine manipulation as well as simple and firm grasping. *Id.* Holding trays and circuit boards requires grasping, but no repetitive fingering motions are required. *Id.*

October 10, 2001 Accident

Petitioner testified that on October 10, 2001, there were some people missing from the line. Tr. p. 16. Petitioner testified that she was assigned as the pick and place person, but since there was no one to pick up the heavy fixtures she pulled the fixtures from the bottom of the table and put them in a cart to carry them. Tr. p. 16; *see also* Tr. p. 80. Petitioner testified that the second time she pulled the fixtures to place them on the table she felt pain in her back "like I was stung with a hard pain[.]" Tr. pp. 16-17; *see also* Tr. pp. 139-140.

Petitioner further testified that one could either sit or stand depending on the size of the circuit boards and covers, some of which were big. Tr. pp. 81-82. Petitioner was unable to accurately describe the size or weight of these boards, but estimated that they were approximately 1' x 6" and approximately 1-1½" thick. Tr. pp. 82-84.

Petitioner testified that the circuit board would come to her on a conveyor belt and she would snap a part onto the circuit board. Tr. p. 83. She also testified that the circuit boards were copper on the bottom and green on the top, that the metal piece that she attached to the circuit board was the same size as the bottom of the circuit board, and that she would then place the circuit board back onto the conveyor belt to go forward on the line. Tr. pp. 85-86.

Petitioner testified she told her coworker about her injury and that her coworker told Petitioner's supervisor that her back was hurting. Tr. p. 17.

Respondent's Health Services Department & Alexian Brothers

Petitioner testified that she was referred to, and saw, the company nurse. Tr. pp. 17, 30-31. She also went to Respondent's clinic at Alexian Brothers a few times. Tr. pp. 30-31. The medical records reflect that Petitioner went to Alexian Brothers on October 15, 2001. PX4. At that time, Petitioner's restrictions included no lifting/carrying over 2 pounds with the left arm, limited pushing/pulling with the left arm, no limited strong grip/grasp/pinch with the left hand/arm, and no reaching/lifting above the left shoulder. PX4. Petitioner also saw a nurse at Respondent's Health Resources department on October 22, 2001, was sent to the clinic, and then returned to work with restrictions. PX1. Petitioner returned to the nurse on November 2, 2001 and was sent to the clinic at 8:15 a.m. PX1. The work restrictions ordered on October 22, 2001 and November 2, 2001 remained the same with the exception that Petitioner was further restricted from pushing/pulling over 5 pounds. PX4.

Stamelos Clinic

Petitioner testified that she then went to see Dr. Stamelos because he spoke Greek and that all of the treatment that she received from Dr. Stamelos in 2001 and 2002 was for her neck, hands, and arm; he was not treating her for any other purpose. Tr. pp. 31, 62, 88-89. At that time, Petitioner testified that she noticed numbness in her hand and fingers, especially on the left, and pain in her neck and hand. Tr. pp. 33. Petitioner also testified that she was laid off in 2001. Tr. pp. 31-32.

Petitioner testified that she continued to treat with Dr. Stamelos, and occasionally went to Respondent's medical department where they put ice on her shoulder and left hand. Tr. pp. 40-41.

Petitioner first saw Spiros Stamelos, M.D. ("Dr. Stamelos") on November 14, 2001. Tr. p. 88; PX5; PX12, p. 7. At that time, Petitioner reported an injury on October 10, 2001 "of the left shoulder because of repetitive usage. She works in the line resulting in over usage of the left arm." PX5; *see also* PX12, p. 8 (Dr. Stamelos testified that Petitioner attributed her injury primarily to repetitive hand work at Motorola). Petitioner reported that "[s]he was pushing and closing containers when she experienced [numbness, tingling, and pain radiating down to the first, second, and third digits of the left arm/hand] because of repetitive usage." PX5; *see also* PX12, pp. 42, 43-44. A handwritten history, presumably taken by Dr. Stamelos' staff, reflects that Petitioner "sts was pushing & clicking container in assembly line. Pt had repetitive assembly line motion which cause L shoulder pain." PX5.

Dr. Stamelos' records reflect only limited range of motion in the left shoulder and cervical spine, a very painful left shoulder, and paraspinal muscle spasms without any complaint of bilateral hand tingling, primarily on the left. *Id.* The medical records further reflect that Dr. Stamelos' note that Petitioner's x-rays showed a loss of lordosis in the spine. *Id.* Dr. Stamelos administered trigger point injections into the bilateral shoulders and cervical spine. PX5; PX12, p. 34. He ordered different prescription medications from the "inappropriate" ones prescribed at Alexian Brothers that gave Petitioner a rash. PX5. He ordered a left shoulder MRI, a cervical spine MRI, and an EMG/NCV of the left upper extremity "because of the radiation of the pain down the arm." PX5; *see also* Tr. pp. 34-35. Additionally, he ordered physical therapy because of Petitioner's radiating pain down into the left arm. PX5. Dr. Stamelos noted that "I do believe it is soft tissue in the form of impingement versus a rotator cuff injury and possible AC degeneration and possible labrum injuries." *Id.* Petitioner was placed off work by a chiropractor at the Stamelos clinic through November 28, 2001. PX5; *see also* PX12, p. 13.

On November 16, 2001, Petitioner reported diffuse neck pain, moderate pain radiating into the left shoulder, increased pain when lifting the left arm and bending the neck backwards, and headaches. PX5. Petitioner reported being pain free before and an onset of pain while she was working a repetitive job at Motorola on October 10, 2001, which she rated at a level of 7/10. *Id.* Dr. Stamelos noted that muscle relaxant and anti-inflammatories helped minimally as had a course of physical therapy, but that her pain had not improved significantly and that she had difficulty sleeping as well as performing tasks at home. *Id.* After an examination, Dr. Stamelos diagnosed Petitioner with chronic moderate cervical strain with associated mild myofascial pain syndrome and articular dysfunction of the C5-C6 and facet with left arm radiculopathy from suspected arthritic changes or the space occupying disc lesions at C4-C7 and cervicogenic tension headaches. *Id.* He ordered home exercises, a TENS unit for electrical stimulation, and chiropractic care. PX5; *see also* Tr. pp. 36-37. Petitioner returned to a chiropractor at Dr. Stamelos' clinic for continued chiropractic care and/or physical therapy throughout her treatment with Dr. Stamelos. PX5.

Petitioner underwent a cervical spine MRI on November 21, 2001. *Id.* At that time, Petitioner reported "left-sided neck pain radiating down the left arm since lifting and pulling injury at work October 10, 2001." *Id.* The interpreting radiologist noted a large left lateral herniated disc at C6-C7. *Id.* Petitioner underwent a left shoulder MRI on the same date and reported "[p]ain since lifting/pulling injury." *Id.* A different interpreting radiologist noted: (1) mild to moderate increased signal intensity involving the supraspinatus tendon anterodistally consistent with inflammation, degeneration, or contusion if trauma has occurred but no rotator cuff tear; (2) no labral-ligamentous complex tear; and (3) an approximately 1.4 x 1.0 cm circumscribed lesion involving the medial aspect of the humeral head most commonly representing a conjoined lesion/cortical chondroma. *Id.*

On November 28, 2001, Dr. Stamelos placed Petitioner off work through December 5, 2001 pending an orthopedic evaluation. PX5; *see also* Tr. pp. 89, 151-152.

On December 5, 2001, Petitioner returned to Dr. Stamelos complaining of left shoulder pain and neck pain causing headaches as well as numbness in the left hand in the second and third digits. PX5. No objective examination findings were noted at the time of this visit. *Id.*

On December 11, 2001, Petitioner underwent the recommended EMG/NCV to rule out left cervical radiculopathy versus a myofascial referral pattern. PX5. Specifically, Petitioner was being evaluated for her "complaints of neck pain and associated radiation of the pain with paresthesias into her left upper extremity since her work related pulling injury of October 10, 2001. She is referred to rule out a left cervical radiculopathy vs. a myofascial referral pattern." *Id.* The interpreting physician opined that Petitioner's study was abnormal, the EMG findings were consistent with left C7 radiculopathy, there was evidence of a mild-moderate median neuropathy at the left wrist, and evidence of the mild median sensory neuropathy at the right wrist. PX5; *see also* PX12, pp. 9-10.

On December 19, 2001, Dr. Stamelos reviewed Petitioner's MRI films and EMG/NCV test results and noted "[t]he impression" of left carpal tunnel syndrome, right carpal tunnel syndrome mild, and a herniated disc at C6-C7 on the left. PX5. At his deposition, Dr. Stamelos testified that Petitioner's C6-C7 nerve problem affected Petitioner's left upper extremity. PX12, pp. 10-11. Dr. Stamelos referred Petitioner for a neurology consult and ordered continued conservative management (i.e., chiropractic care). PX5. While he notes that he evaluated Petitioner in the office, no objective examination results are identified. *Id.* Petitioner was placed off work through January 16, 2002[2]. *Id.*

On January 28, 2002, Petitioner was placed off work because she was "100% disabled from work until further notice." *Id.*

First Section 12 Examination – Dr. Skaletsky

On February 5, 2002, Petitioner saw Gary Skaletsky, M.D. ("Dr. Skaletsky") at Respondent's request. Tr. pp. 77-78; RX9. Dr. Skaletsky examined Petitioner and took a history from her, reviewed various treating medical records, and rendered opinions regarding Petitioner's cervical spine. RX9.

[2] While the Stamelos clinic note reflects a January 16, 2001 date, the date of Petitioner's visit was December 19, 2001. PX5. The Arbitrator notes that Petitioner's next appointment was scheduled for, and Petitioner's off work status was effective through, January 16, 2002.

Regarding the mechanism of injury, Petitioner reported that on October 10, 2001 she "was performing a function that she says required her to exert significant downward pressure with both upper extremities onto a metal part. This was done repetitively as the parts came past her on a conveyor belt. The purpose of this function was to snap or fit the metal part onto another piece of equipment. In doing so, she felt the immediate onset of pain in her neck radiating to the left upper extremity." *Id.* Petitioner also reported continuing work with increased symptomatology and numbness and weakness of the left upper extremity. *Id.*

Petitioner testified that she did not recall describing a job to Dr. Skaletsky where she worked on a conveyor belt snapping or fitting metal parts into another piece of equipment, but soon thereafter testified that this is what she did on "[t]hat day that I was hurting. That was the job I was hurting." Tr. pp. 78-79. Petitioner testified that this is the pick and place job. Tr. p. 79.

On examination, Dr. Skaletsky noted that Petitioner was uncomfortable, tilted her head toward the right, and held her left upper extremity flexed at the elbow and close to the body. PX9. Petitioner's neck had limited range of motion particularly in extension and turning to the right as well as tenderness and spasm to palpation of the left cervical, trapezius, and scapular muscles. *Id.* Petitioner's deep tendon reflexes were symmetrical and equal with no Babinski's signs or pathologic reflexes. *Id.* Petitioner's gait and station were normal although she kept her left arm relatively close to her body while walking, her strength was decreased rather diffusely in the left upper extremity which Dr. Skaletsky believed to be secondary to pain rather than true weakness, Petitioner's Romberg test was negative, and there was no sign of atrophy or fasciculation. *Id.* Petitioner's sensory examination was decreased on the outer aspect of the left upper extremity down to the level of the second and third fingers of the left hand. *Id.*

Ultimately, Dr. Skaletsky diagnosed Petitioner with a herniated nucleus pulposus on the left at C6-C7 with left cervical radiculopathy. *Id.* He recommended an anterior C6-C7 discectomy with interbody fusion and opined that Petitioner would reach maximum medical improvement 12 weeks postoperatively. *Id.* Dr. Skaletsky also noted his concern about causal connection. *Id.* Specifically, he noted the discrepancy between Petitioner's report of the mechanism of injury on the date of his examination and an October 15, 2001 note indicating that Petitioner was applying gentle pressure with her thumbs at the time of injury. *Id.* He also noted his review of a line assembly operator job description indicating the need to lift up to 15 pounds, use tweezers, and a hand torque set to 15 pounds. *Id.* Dr. Skaletsky further noted that if Petitioner was performing the latter job there was no causal connection between her injury and the diagnosis, whereas his opinion might change if she was performing a different job with different requirements at the time of injury. *Id.*

Continued Medical Treatment

On February 20, 2002, Dr. Stamelos noted Petitioner's "history of neck and *bilateral shoulder injuries*, work related, on 10/10/01." PX5 (*emphasis added*). However, Petitioner only reported neck and left shoulder, arm and/or hand symptoms during chiropractic care prior to February 20, 2002. *Id.* Petitioner did not report any traumatic injury to or symptomatology in the right shoulder, arm, or hand. *Id.* Petitioner complained of "[pain] in the neck and shoulders [that] continues" at a chiropractic visit on February 25, 2002. *Id.* On cross examination, Petitioner denied complaining only about neck pain and not pain in the hands. Tr. p. 120. Dr. Stamelos diagnosed Petitioner with a cervical strain, whiplash and radiculitis of the cervical spine. PX5. While he notes that he evaluated Petitioner in the office, no objective examination results are identified. *Id.* He ordered continued conservative treatment and kept Petitioner off work. *Id.*

Petitioner sought treatment with Wesley Yapor, M.D. ("Dr. Yapor") on March 5, 2002. PX5; *see also* Tr. p. 89. At that time, she reported "that she was perfectly healthy and fine up until November of 2001." PX5. Petitioner

reported that she was working for Respondent where she "was working pain forth at a rather unusual high effort." *Id.* She further reported that "she began experiencing pain in the left upper extremity shortly thereafter.... [and] pain and increasing discomfort, especially in the index and middle finger of the left upper extremity...." *Id.* Dr. Yapor advised Petitioner that surgery was the most definitive way to treat her left upper extremity, but Petitioner reported that she had just started cervical traction which she wanted to continue and he advised that she should do so and return to him after traction was completed. PX5; *see also* Tr. p. 89. Petitioner testified that she refused the recommended surgery because she was afraid. Tr. pp. 89-90.

On March 20, 2002, Petitioner reported improved "neck pain and bilateral shoulder pain" and "numbness and tingling in the bilateral hands, left hand worse than right." PX5. Dr. Stamelos diagnosed Petitioner with cervical degenerative disk disease and a herniated disk at C5-C6. *Id.* While he notes that he evaluated Petitioner in the office, no objective examination results are identified. *Id.* Dr. Stamelos also noted that "[e]ssentially, there is no change in the patient's condition." *Id.* He ordered continued conservative treatment for "cervical disc herniation with radiculopathy on the left at C6-7" and kept Petitioner off work. *Id.*

On May 20, 2002, Petitioner reported "neck pain, left shoulder pain, left wrist pain and right wrist numbness." PX5. While Dr. Stamelos noted that he evaluated Petitioner in the office, no objective examination results are identified. PX5. Dr. Stamelos changed Petitioner's diagnoses to chronic pain syndrome, carpel tunnel syndrome, left shoulder pain and cervical spine pain, but again noted that "[e]ssentially, there is no change in the patient's condition." PX5. He ordered continued conservative treatment, noted that "wrist surgery for carpal tunnel release will be considered in the future[,]" and kept Petitioner off work. PX5; *see also* Tr. pp. 36-37, 90 and PX12, pp. 13-14.

On June 12, 2002, Petitioner reported "neck pain, left shoulder pain and bilateral wrist numbness and pain." PX5. While Dr. Stamelos noted that he evaluated Petitioner in the office, no objective examination results are identified. *Id.* Dr. Stamelos changed Petitioner's diagnoses to chronic pain and disability, bilateral wrist numbness, and left shoulder pain, but again noted that "[e]ssentially, there is no change in the patient's condition." *Id.* He ordered continued conservative treatment "secondary to chronic pain[,]" and kept Petitioner off work. *Id.*

On August 7, 2002, Petitioner reported "neck pain." *Id.* While Dr. Stamelos noted that he evaluated Petitioner in the office, no objective examination results are identified. *Id.* Dr. Stamelos changed Petitioner's diagnoses to "[c]ontinued cervical syndrome, chronic pain." *Id.* He again noted that "[e]ssentially, there is no change in the patient's condition." *Id.* He also noted that Petitioner was "awaiting for a return to work versus surgical intervention[, and that Petitioner] states that the medications are not helping her." *Id.* Dr. Stamelos kept Petitioner off work and scheduled a return visit in one week. *Id.*

On August 19, 2002, Petitioner reported "neck pain and numbness to the bilateral hands, right side worse then [sic] the left." *Id.* While Dr. Stamelos noted that he evaluated Petitioner in the office, no objective examination results are identified, however he now noted that Petitioner's "condition" was improving. *Id.* He diagnosed Petitioner with cervical syndrome, ordered continued conservative treatment. *Id.* The work note, however, reflects that Petitioner's diagnoses are "cervical strain, radiculitis[.]" *Id.* Dr. Stamelos returned Petitioner to light duty work with a 5-pound lifting restriction beginning August 20, 2002. PX5; PX12, pp. 15, 45-46; *see also* Tr. pp. 89, 90-93, 151-153 (Petitioner testified that she was off work through this date per Dr. Stamelos' orders, but later testified that she could not recall if she was paid during this period of time or how long she was off work after Dr. Stamelos placed her off work).

At trial, Petitioner testified that she returned to work for Respondent in a light duty position in inspection for approximately two weeks as prescribed by Dr. Stamelos. Tr. pp. 37-38. The inspection position was easy and, while she used her hands, Petitioner testified that she did not lift or turn anything using her wrists. Tr. pp. 38-39. Then Petitioner testified that she was placed back in the laser and manual tune positions. Tr. pp. 39. At this time, Petitioner testified that she noticed that she got tired easily, her back was killing her, her shoulder was killing her, and her hand was killing her. Tr. pp. 39-40. On cross examination, Petitioner denied that Respondent accommodated her restrictions and testified that after one week she was "put on the line again" in her manual tune position. Tr. pp. 93-95.

On October 2, 2002, Petitioner returned to Dr. Stamelos and reported "bilateral hand pain and numbness, right side worse then [sic] the left[, and…] neck pain." PX5; PX12, p. 49. Petitioner also reported that she was working light duty. PX5. While Dr. Stamelos noted that he evaluated Petitioner in the office, no objective examination results are identified. *Id.* Dr. Stamelos changed Petitioner's diagnoses to "[c]ontinued bilateral hand pain, carpal tunnel syndrome and cervical syndrome." *Id.* The work note, however, reflects that Petitioner's diagnoses are "cervical strain, radiculitis[.]" *Id.* He ordered physical therapy with a chiropractor "on an as needed basis[,]" and increased Petitioner's work restrictions to include sedentary work only and no lifting/pushing over 2 pounds. *Id.* The work note reflects that Petitioner was restricted from lifting/carrying over 5 pounds, pushing or lifting at all, and that she was to "continue" light sedentary work. *Id.* The prior work note, however, does not mention sedentary work. *Id.*

Petitioner did not seek medical treatment again for nine months until July 2, 2003. PX5; PX12, p. 16. On this date, Petitioner reported a work related injury on October 10, 2001 "when she was pushing some fixtures into a box resulting in pain in her neck." PX5. Dr. Stamelos noted Petitioner's visit with Dr. Yapor [presumably from March 5, 2001] "where the cervical syndrome was diagnosed not to mention the carpal tunnels and bilateral hand pain." *Id.* He also noted that Petitioner continued to have pain but was avoiding surgery or invasive treatment hoping that it would get better spontaneously, and that she continued to see Dr. Sotos [from his clinic] for noninvasive chiropractic care. *Id.* At his deposition, Dr. Stamelos testified that Petitioner had not yet had surgery and she wanted to continue with therapy and chiropractic treatment. PX12, p. 17.

Regarding her symptoms, Petitioner reported that she "still has neck pain, low-back pain and bilateral wrist pain and numbness." PX5. Dr. Stamelos does not identify any objective examination at the time of this visit. *Id.* Dr. Stamelos noted that Petitioner had been diagnosed with cervical syndrome, herniated discs in the neck, and chronic pain, but she had not responded well to conservative management. *Id.* He further noted that Petitioner would begin treatment at the clinic on a regular basis and that she was "going to probably end up having a carpel tunnel release as a starter since she is not improving all of this time." *Id.* He determined that Petitioner's large C6-C7 herniated disc of the left was causing radicular symptoms and her feeling of ill being. *Id.* He ordered continued restricted duty work and for her to return to the clinic "prn." *Id.* No objective examination findings were noted at the time of this visit. *Id.*

Petitioner did not seek medical treatment again for another eight months until February 25, 2004. PX5; PX12, pp. 17-18. On this date, Dr. Stamelos authored a narrative letter at Petitioner's request noting that she was "presently working in a light duty capacity" and that her restrictions were permanent. PX5; PX12 pp. 50-51. At his deposition, Dr. Stamelos testified that he "would just rather write it and get her off my back than argue with her." PX12, pp. 50-51. In his report, Dr. Stamelos stated that Petitioner was injured at work on October 10, 2001 "secondary to pushing a lot of weight resulting in a strain and injury to her cervical spine and shoulder. This resulted in severe neck pain, left shoulder pain, and left arm pain." PX5; *see also* PX12, pp. 17-18. He opined that Petitioner sustained a permanent injury in the neck and upper girdle that "necessitate either surgical indications at C5-C6 and C6-C7 or for her to modify her workload to accommodate the condition." PX5; *see*

also Tr. pp. 36-37. He noted that Petitioner had "opted for a modification of her work style and to work within her limitations." PX5. He recommended an evaluation and permanent work restrictions along with a permanent position that would accommodate herniated discs in her neck and left radiculopathy. *Id.*

At his deposition, Dr. Stamelos testified that he did not refer to Petitioner's carpal tunnel syndrome because he had to address Petitioner's neck first, which was the "central problem." PX12, pp. 52-53. He further testified that Petitioner injured herself secondary to pushing a lot of weight. PX12, p. 51. Dr. Stamelos qualified his response about the mechanism of Petitioner's injury by stating "[w]ell, that's what she said in Greek, maybe I misinterpreted. What she meant was repetitive motion. There is no Greek word for repetitive motion. Pushing a lot of weight or doing a lot of work, work with her hands of course." PX12, p. 51. He added, "I think there is weight involved, but I think she meant just an awful lot of work went through her hands, that would be a good way to describe it. [.... And, there] was lifting in her job. She said she had to lift some boxes after she filled them, but she said most of her work was doing repetitive motion. And somebody, I think, I don't remember, somebody I think it was this doctor who saw her, said she did like 3,000 maneuvers a day or something[, which was Petitioner's estimate to that doctor and probably to him as well.]" PX12, pp. 51-52.

On March 31, 2004, Petitioner returned reporting ongoing neck pain that was worse over the posterior aspect. PX5. Petitioner did not report pain in either arm or hand. PX5. Dr. Stamelos noted that Petitioner had a repetitive usage injury from Motorola that had been contested and that "[f]or some reason, they do not want her to have the surgery." *Id.* He ordered medications, injections therapy, diagnosed her with cervical syndrome related to her injury on October 10, 2001, and instructed her to return on an as needed basis. *Id.* No objective examination findings were noted at the time of this visit other than Dr. Stamelos' handwritten diagnosis of "cervical syndrome." *Id.*

Approximately three months later, on June 30, 2004, Petitioner returned to Dr. Stamelos. *Id.* He noted that she had carpal tunnel syndrome and needed surgery, low back pain, and cervical spine syndrome due to herniated discs at C5-C7 "all from an injury on October 10, 2001 at Motorola." *Id.* No objective examination findings were noted at the time of this visit other than Dr. Stamelos' handwritten diagnoses of "LBP/C-spine/HND [illegible]." *Id.*

September 23, 2004 Accident & Continued Medical Treatment

Petitioner testified that she was lifting boxes on September 23, 2004 and hurt herself and felt a sharp pain, again. Tr. p. 41. She returned to Dr. Stamelos on September 27, 2004 who placed her off work. Tr. pp. 41-42, 119-120. Petitioner testified that she did not receive workers' compensation benefits or temporary total disability benefits from September 24, 2004 through February 27, 2007. Tr. pp. 42-43.

Dr. Stamelos' records contain two different progress notes dated September 27, 2004. PX5. The first such note reflects Dr. Stamelos' notation that Petitioner returned after sustaining "a repetitive motion injury while working in the assembly line and pushing fixtures." *Id.* He noted that Petitioner developed radiculopathy which turned out to be herniated discs at C5-C6 and C6-C7, and despite conservative treatment, Petitioner's condition had worsened. *Id.* He ordered a physical therapy and surgical evaluation for the cervical spine by Dr. Alburno and further diagnostic testing, prescribed pain medication including Vicodin, ordered physical therapy, and placed Petitioner off work until further notice "[d]ue to excessive pain[.]" *Id.* No objective examination findings were noted at the time of this visit other than Dr. Stamelos' handwritten diagnoses of "cervical syndrome/HND C5 C6 C6 C7[.]" *Id.* Petitioner testified that on cross examination that she did not recall being referred by Dr. Stamelos to Dr. Alburno or being treated by him. Tr. p. 120. Dr. Stamelos' assessment was that Petitioner had

cervical syndrome with herniations from C5-C7 and radiation to the left from the shoulder down to the mid-upper arm. PX5. He noted that conservative management had failed. *Id.*

The second note dated September 27, 2004 reflects Dr. Stamelos' notation that Petitioner returned after an injury at work on September 23, 2004 with "quite significant" pain complaints of neck stiffness, pain, and radiculopathy "that has occurred since the time of the injury while working at Motorola. The radiculopathy and the pain were so severe that she had to get an emergency appointment to see me where I will try to treat her for these new symptoms that she has developed." *Id.* Dr. Stamelos noted that Petitioner had "some kind of history of neck problems in the past[, however], she has had no symptoms for a long time, and it seems to be a new occurrence based on the patient's history and the patient's presentation." *Id.*

On October 13, 2004, Petitioner returned to Dr. Stamelos and reported considering discoplasty with Dr. Alburno. *Id.* While Dr. Stamelos noted that he evaluated Petitioner in the office, no objective examination[3] results are identified other than Dr. Stamelos' handwritten diagnosis of "cervical syndrome considering discoplasty [with] Dr. Alburno." *Id.* Dr. Stamelos diagnosed Petitioner with cervical syndrome, ordered a continuation of the "current course of management," and instructed Petitioner to return as needed. *Id.*

At his deposition, Dr. Stamelos testified on cross examination that Petitioner had no hand complaints on September 27, 2004 through November 17, 2004. PX12, pp. 54-55. He further testified that he did not treat Petitioner for carpal tunnel syndrome from the second half of 2004 through 2007, but he qualified his response by stating that he treated Petitioner for the more important cervical injury. PX12, pp. 55-56.

October 14, 2004 Incident Report

An Occupational Health Resources Injury and Illness Incident Report ("incident report") completed by Petitioner on October 14, 2004 reflects that when she returned to work after her 2001 injury she worked on the laser machines. Tr. pp. 116-119; PX3; RX3. Petitioner reported that after she returned to work from her 2001 injury she was placed to work on 4 laser machines despite having restrictions. PX3. The Arbitrator notes that the incident report originally reflected three laser machines but that was written over with the number four. *Id.* Petitioner further stated that she complained to Frank as of April 1, 2004 that he needed to move her. *Id.* According to the incident report, Frank asked Petitioner for other paperwork which she provided from her Dr. and he moved her, "but the damage was done and I was visiting the nurses offices for [illegible] often and he was complaining because I was going to the nurse for [illegible] something to relieve my pain so on Sept 23 I visit the office and told them I was going to the doctor after the nurses (Marylyn [illegible]) advised to visit my doctor[.]" *Id.*

On re-direct examination Petitioner testified that she completed the incident report after she was injured the second time noting that Frank, her supervisor, had given her regular work which was contrary to her doctor's restrictions. Tr. pp. 142-143. On re-cross examination, Petitioner testified that Frank put her back to her original position in manual tune. Tr. pp. 156-157.

The incident report reflects that the body parts affected included only the upper back and left arm. Tr. pp. 116-119; PX3; RX3. Petitioner testified that she gave this report to the nurse. Tr. p. 156. Upon questioning as to

[3] The Arbitrator notes that Dr. Stamelos' records contain a note from October reflecting that Petitioner was diagnosed with cervical disc herniation and that an examination was performed, however the day and year of the exam is unidentifiable and the signature appears to be by someone with the first name initial "K," which the Arbitrator infers is not Dr. Stamelos. PX5.

the exclusion of any reference in the incident report of injury of her hands, Petitioner testified that her English was not very good. Tr. pp. 118-119.

Continued Medical Treatment

Petitioner underwent another cervical spine MRI on October 6, 2004 as indicated by a history of "pain." PX5. On October 27, 2004, Petitioner began physical therapy at the Stamelos clinic for her neck pain. *Id.*

On November 17, 2004, Petitioner returned with a "cervical problem" including effacement and the disc herniation at C5-C6 with spurring resulting in cord compression and chronic cervical radiculopathy and cervical syndrome." *Id.* Dr. Stamelos noted that Petitioner was still considering discoplasty and that she was awaiting approval for the surgery. *Id.* Petitioner was to return to him as needed. *Id.*

Approximately four months later, on March 23, 2005, Petitioner returned to Dr. Stamelos and reported that she was not working. *Id.* Dr. Stamelos noted that Petitioner had cervical syndrome and a herniated nucleus pulposus. *Id.* While Dr. Stamelos noted that he evaluated Petitioner in the office, no objective examination results are identified. *Id.* He ordered that Petitioner continue "with the current course of management" and scheduled a follow up in four weeks. *Id.*

On June 15, 2005, Petitioner returned to Dr. Stamelos, who noted that Petitioner suffered from cervical spine syndrome and that she needed physical therapy, which was being denied. *Id.* He also noted that Petitioner had low back pain, and that Petitioner could not work at that time. *Id.*

On September 26, 2005, Dr. Stamelos noted that Petitioner had cervical spine syndrome and that she needed nucleoplasty surgery. *Id.* While Dr. Stamelos noted that he evaluated Petitioner in the office, no objective examination results are identified. *Id.* He referred Petitioner to Dr. Elborno for an evaluation and to schedule surgery at which he wanted to be present. *Id.* No objective examination findings were noted at the time of this visit. *Id.*

Second Section 12 Examination – Dr. Levin

On October 10, 2005, Petitioner underwent a second section 12 evaluation of the neck with Mark Levin, M.D. ("Dr. Levin"). Tr. pp. 120-121; RX10. Dr. Levin examined Petitioner and took a history from her, reviewed various treating medical records, and rendered opinions regarding Petitioner's cervical spine. RX10.

Petitioner gave Dr. Levin a history of her condition. *Id.* She reported working as a full-time cell phone assembler for Respondent for 27 years. *Id.* In 2001, she reported that she was lifting 50 lbs. every twenty minutes and began having neck pain. *Id.* Petitioner treated with Dr. Stamelos, underwent therapy and injections, and that it was recommended that she undergo a cervical fusion, but she was scared and did not undergo the surgery. *Id.* She also reported a temporary improvement while being off work for 6-7 months. *Id.* Petitioner opted to undergo continued therapy and pain management and she worked light duty until April of 2004 when she was returned to full duty work. *Id.* Again, Petitioner reported that in her full duty position she had to lift up to 50 pounds, but she did not specify how often she did so. *Id.* She also reported that after two months of full duty work she started having increased neck pain, saw the company nurse, and underwent some occupational therapy. *Id.* "By September 23, 2004 her neck pain gradually increased and she started getting numbness and tingling down her fingers, more on the left than the right." *Id.* Petitioner was placed off work and underwent some trigger point injections with Dr. Stamelos, who referred her to another doctor for surgery,

which she reported she was then ready to accept. *Id.* Finally, Petitioner reported developing pressure headaches. *Id.*

At the time of her examination, Petitioner complained of neck pain at a level of 7-8/10 with a sharp, constant burning sensation. *Id.* Petitioner reported pain greater on the left then on the right with pain radiating down her arms and "she feels like she drops items." *Id.* Petitioner reported headaches with weather changes, worsening neck pain when turning her neck to the right, minimal driving, and feeling "like she has lost the ability to move her arms behind her back." *Id.*

On examination of the neck, Petitioner complained of tenderness to palpation over the left cervical paraspinal muscles going into the left trapezius, no pain over the right cervical paraspinal muscles or the right trapezius, and pain over the medial border of the left scapula with slight tenderness over the medial border of the right scapula. *Id.* Petitioner had some slight discomfort to palpation over the thoracic spine us processes. *Id.* She was able to forward flex and touch her chin to within 1 inch of her chest and extend back to neutral. *Id.* Her right deviation was 45° and left deviation was 70°. *Id.* On examination of the upper extremities, Petitioner had tenderness over the right and left AC joint and left AC joint and diffuse discomfort over the entire left clavicle and to palpation of the left arm. *Id.* Petitioner's active range of motion in the shoulders was 170° bilaterally on forward flexion, 170° on right abduction, 160° on left abduction, internal rotation on the right to T5 and on the left to T10. *Id.* Petitioner's external rotation was 90° bilaterally and rotator cuff strength was 5/5 bilaterally. *Id.*

Dr. Levin diagnosed Petitioner with cervical spondylosis with secondary neck discomfort and loss of range of motion. *Id.* He noted that Petitioner did not give any one alleged work injury that was causing her discomfort but stated that this gradually became worse on September 23, 2004 causing her to be off work. *Id.* Dr. Levin noted that he did not have Petitioner's actual job description at the time of his report and that he had not reviewed actual films of certain diagnostic studies. *Id.*

Ultimately, Dr. Levin opined that Petitioner had no specific accident occurring on September 23, 2004 and noted that Petitioner described that it was increased work activities beginning in April of 2004 that made her symptoms worse. *Id.* Dr. Levin disagreed with the recommended discoplasty from pain management. *Id.* He noted that the procedure was not the standard of care currently used in orthopedics and that he would not recommend the procedure for Petitioner. *Id.*

Continued Medical Treatment

On November 30, 2005, Petitioner returned to Dr. Stamelos. PX5. At this visit, Dr. Stamelos noted that Petitioner "was inappropriate" at her last visit and that she needed a psychiatric referral to treat her for depression. *Id.* The Arbitrator notes that no such inappropriate behavior was noted in Dr. Stamelos' September 26, 2005 progress note. *Id.* Dr. Stamelos also referred to Petitioner's October 10, 2001 injury and Petitioner's reluctance to have surgery which she now wanted to undergo but had no financial means by which to do so. *Id.* He further noted that Petitioner had recently been evaluated by Dr. Mark Levin of Barrington Orthopedics who felt that she needed her workup and possibly surgery. *Id.* Petitioner reported being in pain and requested injection therapy, which he noted was indicative of a lot of pain because Petitioner was needle phobic. *Id.* The Arbitrator notes that no such phobia was mentioned on November 14, 2001 when Dr. Stamelos first provided injection therapy to Petitioner, or at any time thereafter until this date. *Id.* Dr. Stamelos diagnosed Petitioner with cervical disc syndrome and left radiculopathy with her hand being very weak and painful. *Id.* No objective examination findings were noted at the time of this visit. *Id.*

On July 31, 2006, Petitioner testified that she came under the care of Dr. Bauer as approved by Respondent. Tr. pp. 43-44, 121. Petitioner lists her occupation as laser operator in the new patient information form of the same date. PX6.

Petitioner saw Jerry Bauer, M.D. ("Dr. Bauer") and reported that she was a former machine operator for Respondent with recurrent lifting of 15 pounds. PX6. Dr. Bauer noted Petitioner's history that in 2001 "she was lifting boxes with heavy plates inside and she injured her left arm." *Id.* Petitioner reported problems in her left shoulder, radicular pain and numbness in her left arm, headaches, neck pain, and persistence of symptoms such that she had not worked since 2004. *Id.* Dr. Bauer also noted Petitioner's report of "left sided neck pain with radicular pain radiating down her left arm, hand and fingers with a burning sensation. Driving results in some numbness in her hands and she has to switch hands. Her hands also tend to fall asleep at night." *Id.*

On examination, Dr. Bauer noted that Petitioner had limited range of motion in the neck, tenderness along the left trapezius muscle, and a slightly reduced left triceps reflex and mild weakness of her finger extensors on the left. *Id.* Petitioner had reasonably good strength in both her arms and legs, positive bilateral Tinel's and Phalen's signs, and a positive Hoffman's and Trömner's sign on the right only. *Id.* Dr. Bauer's impression was that Petitioner had a "long history of persistent radicular pain in her left arm. She probably also has carpal tunnel syndrome." *Id.* He recommended repeat MRI of the cervical spine and a repeat EMG study to assess the degree of her radiculopathy and carpal tunnel syndrome. PX6; *see also* Tr. pp. 44-45. He also recommended cervical spine x-rays and a CT scan. PX6.

Petitioner underwent an MRI on August 31, 2006, which showed a small left foraminal disc herniation at the C6-C7 level that would be expected to result in a left C7 radiculopathy and very small midline disc herniations at the C3-C4 and C5-C6 levels. *Id.* A September 18, 2006 MRI showed mild degenerative changes of the lower cervical spine, but was otherwise unremarkable. *Id.*

Petitioner underwent a repeat EMG/NCV on September 8, 2006 that showed very severe right carpal tunnel syndrome on the right and mild left carpal tunnel syndrome. *Id.*

On September 20 and 21, 2006, Petitioner sought treatment with Dr. Bauer. *Id.* Dr. Bauer noted Petitioner's cervical MRI which revealed a small central disc herniation at C5-C6, and a herniated disc on the left at C7[4]. *Id.* Dr. Bauer noted that Petitioner's herniated disc on the left would account for her radiating left arm pain. *Id.* He further noted that Petitioner's EMG revealed bilateral carpal tunnel worse on the right than on the left and that Petitioner was symptomatic from the carpal tunnel syndrome. *Id.* Petitioner wanted to undergo carpal tunnel surgery first and Dr. Bauer referred Petitioner to Dr. Craig Williams. *Id*; *see also* Tr. pp. 121-122.

On October 5, 2006, Dr. Bauer noted that Petitioner called and indicated that she wanted to have her carpal tunnel surgery prior to having neck surgery. PX6. On cross examination, Petitioner denied telling Dr. Williams that she wanted surgery on her hands. Tr. pp. 121-122. She further testified that she did not see Dr. Williams until approximately 2 years later in May of 2008. Tr. p. 122.

[4] The Arbitrator notes that the interpreting radiologist noted that Petitioner also had a small central disc herniation at C3-C4 and that the herniated disc on the left was at C6-C7. PX5.

Third Section 12 Examination & Dr. Fernandez Deposition

On October 17, 2006, Petitioner underwent a third section 12 evaluation by John Fernandez, M.D. ("Dr. Fernandez"). Tr. p. 123; RX8. Dr. Fernandez submitted to a deposition on July 30, 2010. RX7. He is a board-certified surgeon in orthopedics, microsurgery, and hand surgery. *Id*, pp. 5-6.

Dr. Fernandez examined Petitioner and took a history from her. RX8; RX7, pp. 8-12. He did not examine Petitioner's neck or cervical spine. RX7, p. 25. Dr. Fernandez also reviewed certain treating medical records and diagnostic tests, a video depicting the activities of the FQA, pick and place, and laser trim positions, a job analysis entitled physical demand documentation. RX8; RX7, pp. 13-16; *see also* PX2. He rendered opinions regarding Petitioner's carpal tunnel syndrome. *Id.*

On cross examination, Dr. Fernandez testified that Petitioner's description of her job duties correlated with his review of the job video and physical demand analysis and that the accuracy of any job description given to him regardless of the source is important in forming his opinions. RX7, pp. 25-27. He further testified that the simple use of a vibratory air tool would not subject a person to developing carpal tunnel alone; it would depend on the type of tool and the force associated with the use of the tool. RX7, pp. 27-28. Additionally, Dr. Fernandez testified on cross examination that if Petitioner was hypothetically "exposed to heavy gripping, grasping, using tools on a repetitive basis, certain types of vibratory tools as you pointed out, of course those could be contributory factors considered causal to the carpal tunnel syndrome." RX7, pp. 28-29.

At the time of her examination, Petitioner reported that she began to notice discomfort in her hands in 2002. RX8; RX7, p. 8. She also reported neck and shoulder pain, but that her "major" complaints involved numbness and tingling primarily affecting the median nerve distribution right much greater than left. RX8 (quotations in original); RX7, pp. 8-9. The symptoms worsened at night and with activities including driving, and Petitioner reported that her pain and symptoms were at a level of 10/10. RX8; RX7, pp. 8-9. Dr. Fernandez noted that Petitioner was tearful during portions of her examination while speaking about her symptoms and that she did not seem to exhibit symptoms magnification or pain beyond her objective findings. RX8; RX7, p. 12. Petitioner did not report any elbow complaints. RX7, p. 10.

Dr. Fernandez testified that Petitioner related her complaints to her work activities and stated that her 2001 injury occurred at work and she was using her hand tuning tools all day long. *Id.*

Dr. Fernandez diagnosed Petitioner with bilateral wrist carpal tunnel syndrome, right greater than left. RX8. He opined that there was no causal relationship between her work and the development of her carpal tunnel syndrome even though she did the work for 27 years. RX8; RX7, pp. 16-17. He noted that Petitioner's tasks were repetitious, but they were also relatively varied with reference to what she did. RX8. Additionally, he noted that none of the activities involved significant gripping or grasping with significant force, the use of heavy tools, or significant hyperextension or hyper flexion for prolonged periods of time. *Id.* Dr. Fernandez further noted that carpal tunnel syndrome is a multifactorial disorder most commonly seen in females in Petitioner's age group, and that there was an additional risk from Petitioner's increased body mass index/weight. RX8; RX7, pp. 18, 20-21, 35. Finally, Dr. Fernandez noted that there was no doubt that Petitioner's symptoms may increase or worsen with exposure to any activities, including work activities, but that did not warrant a finding of causal relationship or aggravation effect from her work activities. RX8. He opined that Petitioner could work full duty without restriction, that she could keyboard and perform data entry, and that she was at maximum medical improvement unless she decided to proceed with further treatment. *Id.*

At his deposition, Dr. Fernandez testified that carpal tunnel syndrome was caused by excessive pressure on the nerve at the wrist which could be caused by many things including direct trauma although the vast majority of cases were idiopathic "meeting that there is no known single cause. It is multifactorial...." RX7, pp. 17-18. Certain job activities could aggravate or contribute to carpal tunnel syndrome including significantly repetitive activities requiring heavy forceful gripping and hyperflexion or hyperextension. RX7, pp. 18-19. In Petitioner's case, Dr. Fernandez testified that while Petitioner related her symptoms to her job activities because she would get symptoms with job activities the symptoms were a manifestation of her [pre-existing] condition. RX7, pp. 19-20. Dr. Fernandez also testified that there has never really been a proven association between repetitive activities such as keyboarding or data entry without associated force. RX7, pp. 19, 21. On cross examination, Dr. Fernandez testified that a person's genetic predisposition to developing carpal tunnel syndrome coupled with exposure to job activities that everyone agreed could cause carpal tunnel syndrome was insufficient to relate a carpal tunnel diagnosis with the job. RX7, pp. 30-31.

Regarding other factors unrelated to work activities, Dr. Fernandez testified that while carpal tunnel syndrome could progress on its own over time, if Petitioner's job was causing or contributing to her carpal tunnel syndrome then he would expect that Petitioner symptoms would have improved and not worsened while she was off work. RX7, pp. 21-23. On cross examination, Dr. Fernandez acknowledged that carpal tunnel syndrome could progress or deteriorate with or without work activities. RX7, pp. 24-25.

Continued Medical Treatment

On October 29, 2006, Petitioner returned to Dr. Stamelos who noted in a narrative letter that she was a patient "who experienced significant injury to both her wrists and to her cervical spine because of the strenuous work she was involved in working for Motorola." PX5. He noted that it was "well known that her job requires her to be repetitively lifting and grabbing that would be the job description of items in mechanical objects that Motorola builds[,]" that Petitioner was a long time employee of Respondent's and that she had been in good health until recently. *Id.* He also noted that "[d]uring the period of 10/10/01 to 09/23/04, she worked with pain and in September 2004, she was taken off work by me with a letter of medical necessity." *Id.*

Dr. Stamelos opined that Petitioner had known herniations of the cervical spine that were "aggravated by repetitive lifting bending and twisting[,]" that she undoubtedly needed future treatment and surgery, and that while Petitioner was "very appropriate" and her condition was "very subtle" it was also "very serious" because it would ultimately lead to problems in turning her neck and functioning. *Id.* In conclusion, Dr. Stamelos noted that he would "try to become familiar with the case and the terminology and be more than happy to assist [Petitioner's counsel] with deposition because of complexities and difficulties in this type of case, which I believe is a work related repetitive motion injury." *Id.*

On November 9, 2006, Petitioner was cleared for surgery by her insurance company and indicated to Dr. Bauer her wish to proceed with surgery. PX6.

On December 15, 2006, Petitioner returned to Dr. Bauer but was unable to proceed with surgery due to antibiotic treatment for a tooth and gum infection. *Id.* Dr. Bauer noted that Petitioner had persistent burning in pain in the left arm which had been refractory to conservative therapy for a long period of time. *Id.* He also noted that Petitioner had paresthesias in her hand which was related in part to her cervical herniated disc as well as her carpal tunnel syndrome. *Id.*

On February 27, 2007, Petitioner underwent surgery with Dr. Bauer at Advocate Lutheran General Hospital for cervical radiculopathy. PX7; PX6; *see also* Tr. pp. 44-45, 123. Specifically, Petitioner underwent an anterior

cervical discectomy at C5-C6 and C6-C7 with microscope assisted visualization and an anterior cervical interbody fusion at C5-C6 and C6-C7 with placement of hardware including a plate and screws. PX7.

Petitioner testified that she remained under the care of Dr. Bauer after the surgery and began receiving temporary total disability benefits. Tr. p. 46.

The medical records reflect Petitioner saw Dr. Bauer postoperatively. PX6. On February 27 and March 7, 2007, Petitioner underwent x-rays that showed good alignment of the cervical spine and hardware. *Id.* Petitioner also returned to Dr. Bauer postoperatively on April 11, 2007, at which time her x-rays continued to show good alignment. *Id.* He ordered physical therapy for the neck and placed Petitioner off work. *Id.*

On May 9, 2007, Petitioner saw Dr. Stamelos who diagnosed her with depression, referred her to a psychiatrist, and noted that she should return on an as needed basis. PX5.

Petitioner began postoperative physical therapy on May 16, 2007 at Athletico. *Id.*

On May 23, 2007, Petitioner returned to Dr. Bauer, underwent x-rays, and reported residual pain in the left arm which was much improved. PX6. He noted that Petitioner had a normal neurological exam, her wound looked fine, her bone graft, plate, and screws were all in good position, that she had good strength, sensation, and reflexes, and that she reported improved pain as compared to pre-surgical pain. *Id.* He ordered continued physical therapy, prescribed medication, ordered wrist splints, and scheduled a return visit in two months with a repeat x-ray at that time. *Id.*

On July 11, 2007, Dr. Bauer noted that Petitioner's x-rays revealed good positioning of the bone graft, plate, and screws. *Id.* On examination, he noted that Petitioner's wound looked fine, deep tendon reflexes were symmetrical, and that she still had some dysesthesias [pathology] in her left arm. *Id.* Petitioner reported that her neck pain worsened while she was in physical therapy and that she was unhappy with her physical therapy site, therefore she was switched to another one. *Id.* Dr. Bauer kept Petitioner off work in her former position, which he noted was not then available, and scheduled a follow up with x-rays in three months. *Id.*

Petitioner testified that she went to Greece at the end of July of 2007 through August until she returned the first week of September of 2007. Tr. pp. 47, 51. She testified that the purpose of her visit was to see her mother who was sick and to bring her back to the United States. Tr. pp. 47-49; *see also* PX6 (10/31/2007 Dr. Bauer note). Petitioner testified that she did not receive approximately eight weeks of temporary total disability benefits and that her benefits resumed at some point. Tr. pp. 49-53.

On October 31, 2007, Petitioner reported some stiffness down the back of her neck and occasional discomfort in the left arm. PX6. On examination, Dr. Bauer noted that Petitioner's wound looked fine, her deep tendon reflexes and sensation were intact, and she still had some paresthesias in her hands with a positive Tinel's sign which he believed were related to bilateral carpal tunnel syndrome. *Id.* Petitioner testified that Dr. Bauer discharged her from his care and referred her to Dr. Williams. Tr. pp. 54, 124. Indeed, regarding her neck, Dr. Bauer noted that Petitioner reached maximum medical improvement. PX6. He also referred Petitioner to Dr. Williams for carpal tunnel surgery evaluation. PX6; *see also* Tr. p. 54.

In response to correspondence from Petitioner's counsel, Dr. Bauer rendered a report dated November 14, 2007 stating that regardless of whether Petitioner attended her physical therapy she was not able to return to work in August 2007. PX6. In a separate note also dated November 14, 2007, Dr. Bauer noted his placement of Petitioner at maximum medical improvement and stated that if the insurance company wanted specific

restrictions regarding a return to work then Petitioner would need to undergo a functional capacity evaluation. *Id.*

On November 21, 2007, Dr. Bauer referred Petitioner for a functional capacity evaluation. Tr. p. 123.

On December 5, 2007, Petitioner underwent the recommended functional capacity evaluation ("FCE"). Tr. p. 124; PX5; PX6. Petitioner appeared 45 minutes late and reported that she had a work related injury to her neck on September 23, 2004, but "**refused to give the therapist any additional history.**" PX6 (**emphasis in original**). The FCE was invalid due to submaximal effort. *Id.* Petitioner failed 20 of 23 objective validity criteria and the results of the FCE did "not represent a true and accurate representation of [Petitioner's] overall physical capabilities and tolerances at this time." *Id.* The FCE evaluator found that Petitioner was capable of functioning at a higher category of work than the minimal level of sedentary work, which was indicative of 2-hand occasional lift/carry of four pounds from floor-to-waist level, exhibited as a result of the invalid test. *Id.* Petitioner was listed as employable. *Id.*

Psychiatric Treatment

On May 22, 2007[5], Petitioner saw Dale John Giolas, M.D. ("Dr. Giolas"), a psychiatrist, for an initial evaluation based on Dr. Stamelos' referral. PX5. At that time, he noted Petitioner's symptomatology in response to various stressors including "surgical, pain, unemployment" resulting from a work injury and he diagnosed Petitioner with major depressive disorder, single episode, severe without psychotic features. *Id.* Petitioner returned on July 5, 2007[6] and Dr. Giolas maintained his prior diagnosis. *Id.* He recommended a follow up in two months presumably after Petitioner returned from seeing "M" in Greece. *Id.* Petitioner returned to Dr. Giolas on October 4, 2007 and February 6, 2008. *Id.* At the latter visit, Petitioner reported more depression and was "tearful as she is dealing with mother dying of pancreatic Ca at home." *Id.*

Continued Medical Treatment & SSD Benefits

Petitioner testified that she applied for Social Security disability benefits on November 14, 2006 and was eventually approved on September 4, 2008. Tr. pp. 69-70; *see also* PX5 (2/4/08 Stamelos note).

On January 14, 2008, Dr. Bauer noted his review of Petitioner's FCE that was "inconclusive" and stated that he would, thus, be unable to provide reasonable activity level recommendations and possible restrictions for Petitioner. PX6.

On February 4, 2008, Petitioner returned to Dr. Stamelos who noted that she was status post fusion with residual problems, had chronic pain, carpal tunnel syndrome, depression, and residual radiculopathy, and was trying for disability. PX5. No objective examination findings were noted at the time of this visit. *Id.*

She returned three days later on February 7, 2008. *Id.* Dr. Stamelos reiterated that Petitioner was status post cervical fusion and discectomy, that she had been diagnosed with carpal tunnel syndrome and depression, and that she had residual radiculopathy and pain from her cervical spine with chronic pain. *Id.* He opined that Petitioner was "fully disabled for any kind of work since we have the implications of injury, surgery, and some shortcomings." *Id.* He noted Petitioner's age of 53, slight obesity, and difficulty using upper extremities, and

[5] There are two different notes dated May 22, 2007, one of which appears to be incomplete. PX5.
[6] There are two different notes dated July 5, 2007, one of which appears to be incomplete. PX5.

essentially opined that she was fully disabled requiring SSI disability benefits. *Id.* No objective examination findings were noted at the time of this visit. *Id.*

Petitioner was scheduled to see Dr. Bauer again on February 27, 2008, but she did not attend the appointment. PX6. Then, on March 18, 2008, Dr. Bauer responded to correspondence from Petitioner's counsel and advised that he was unable to provide any medical update since he had not seen Petitioner in over four months. *Id.*

Fourth Section 12 Examination

On March 24, 2008, Petitioner saw Dr. Levin a second time at Respondent's request. *See also* Tr. p. 124; RX10. Dr. Levin re-examined Petitioner and took a history from her, reviewed various treating medical records, and rendered opinions regarding Petitioner's cervical spine. RX10. At the time of her examination, Petitioner reported being unemployed since her termination by Respondent in September of 2006, undergoing physical therapy after her surgery through October of 2007, and some continued burning in the left arm and forearm which was constant but varied. *Id.*

On examination, Petitioner was able to forward flex to touch her chin to within 3 inches of her chest and extent back 10°, she had right deviation to 25° and left deviation to 30°, she was tender to palpation over the medial border of the left scapula with minimal tenderness over the right medial border of the scapula, and she had no cervical or thoracic spasm. *Id.* Petitioner's upper extremities revealed no pain to palpation over the AC or SC joints, active shoulder range of motion on forward flexion to 170° on the right and to 90° on the left, passive range of motion to 110° with pain, and abduction on the right to 140° and on the left to 90° with pain. *Id.* Internal rotation on the right was to L1 and to the lumbosacral junction on the left, external rotation was 90° bilaterally, and rotator cuff strength was 5/5 on the right and 5-/5 on the left. *Id.* Petitioner had a negative impingement sign on the right and positive impingement sign on the left which she reported was present for the prior three months. *Id.* She also had a positive Tinel's sign on the left and a negative Tinel sign on the right with normal wrist motion bilaterally. *Id.* Biceps reflexes were normal bilaterally and Petitioner had a negative Phalen's sign. *Id.* Pinprick sensation was decreased over the left arm but otherwise normal. *Id.*

Dr. Levin diagnosed Petitioner as being status post cervical discectomy and fusion at C5/6 and C6/7, and found that she was at maximum medical improvement. *Id.* He also noted that Petitioner had a new onset of some change in her shoulder range of motion which did not appear to be related to her work activities dating back to September of 2004. *Id.* Regarding her ability to work, Dr. Levin noted that Petitioner's functional capacity evaluation was invalid and that Petitioner was capable of doing more than sedentary work, however, based strictly on Petitioner's physical examination, he would restrict Petitioner from work above shoulder level due to the new onset of decreased shoulder range of motion and pain. *Id.*

Continued Medical Treatment

On April 16, 2008, Dr. Stamelos noted that Petitioner was status post cervical fusion, she had disc disease, depression, pain, and carpal tunnel syndrome although [surgery for] that had not yet been approved. PX5. He also stated that she had a "double crush injury," that she worked for Zenith Assembly with repetitive usage of her hand, and that she wanted to have surgery as soon as possible with workers' compensation insurance approval or through alternative insurance. *Id.*

At his deposition, Dr. Stamelos testified on cross examination that Petitioner's carpal tunnel syndrome was related to Petitioner's first accident despite the fact that she had not been treated for it for four years. PX12, p. 57. He testified that the fact that Petitioner had been off work for four years after September of 2004 did not

affect her carpal tunnel syndrome because it never goes away. PX12, pp. 57-58. He also testified that although Petitioner's carpal tunnel syndrome worsened while she was not working, that was due to the normal aging process and Petitioner's hormonal changes. PX12, pp. 57-58. Dr. Stamelos further testified this is why he believed Petitioner wanted "to have it fixed now, but [she didn't] want to pay for it, [she wanted] to get some compensation or something." PX12, p. 58.

Dr. Stamelos referred Petitioner to John Sarantopoulos, D.O. ("Dr. Sarantopoulos") for evaluation of a physical therapy rehabilitation potential status post fusion. PX5; PX8. No objective examination findings were noted at the time of this visit. PX5.

Dr. Williams – Second Opinion and Deposition[7]

On May 7, 2008, Petitioner saw Craig Williams, M.D. ("Dr. Williams") one time per Dr. Bauer's referral for complaints of bilateral hand numbness, worse on the right, tingling and left elbow pain. PX6; PX9; PX13. Petitioner reported being more symptomatic on the right side, experiencing constant numbness bilaterally, worse on the right, and burning dorsal forearm pain on the left. PX9; PX13, pp. 6-10. Among other examination findings, Dr. Williams noted normal bilateral wrist range of motion, tenderness over the left lateral epicondyle and radial tunnel, pain with resisted wrist extension that reproduced forearm burning and pain, and positive Tinel's, Phalen's, and Durkan signs bilaterally. *Id.* At his deposition, Dr. Williams testified that he did not see any evidence of thenar muscle wasting on either side and that if Petitioner told him when her elbow symptoms started, he did not record that in his records. PX13, pp. 9, 44. Dr. Williams' impression was that Petitioner had bilateral carpal tunnel syndrome and evidence of left lateral epicondylitis. PX9; PX13, p. 11. He recommended surgical intervention for the carpal tunnel syndrome and beginning with conservative treatment for the lateral epicondylitis. *Id.*

Dr. Williams submitted to a deposition on May 18, 2009. PX13. He is a board-certified orthopedic surgeon with a subspecialty in hand surgery. *Id*, p. 5.

Dr. Williams testified that he only saw Petitioner on one occasion, May 7, 2008. PX13, p. 5. He authored a report of the same date and a second narrative report, dated September 15, 2008 at Petitioner's counsel's request. PX13, p. 12. He reviewed various records prior to rendering his reports including the following: (1) Petitioner's December 11, 2001 EMG report; (2) Dr. Stamelos' treating record from May of 2002; (3) a letter between Dr. Bauer and Dr. Stamelos from October of 2007; (4) Petitioner's September 8, 2006 EMG; and (5) some of Petitioner's vocational information from Petitioner's counsel. PX13, pp. 26-28.

In response to a lengthy hypothetical question posed by Petitioner's counsel, Dr. Williams testified that Petitioner's carpal tunnel syndrome was related to her work activities based on his "experience with patients with similar activities and similar conditions, as well as [his] knowledge of the anatomy, pathophysiology of the hand." PX13, pp. 14-19. He also testified that a double crush syndrome refers to a neurologic condition in which there may be a compressive neuropathy of a nerve at two levels. PX13, p. 19.

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[7] The Arbitrator notes that Respondent's counsel objected to certain opinions rendered by Dr. Williams at his May 18, 2009 deposition pursuant to *Ghere* because his narrative reports did not encompass all of the issues raised during the deposition and, presumably, those extraneous opinions caught Respondent by surprise at the time of the deposition. PX13, pp. 20; *see also Ghere v. Industrial Comm.*, 278 Ill. App. 3d 840, 663 N.E.2d 1046 (4th Dist. 1996). By the date of hearing, however, and in light of *City of Chicago v. IWCC* and noting the Appellate Court's more recent reiteration of a *Ghere* objection analysis in *Mulligan v. IWCC*, the Arbitrator overrules Respondent's objections. *City of Chicago*, 387 Ill. App. 3d 276, 899 N.E.2d 1247 (1st Dist. 2009); *Mulligan*, 408 Ill. App. 3d 205, 946 N.E.2d 421 (1st Dist. 2011).

Ultimately, Dr. Williams opined that there was a "significant relationship between [Petitioner's] current diagnosis of the carpal tunnel syndrome and the work activities that she had performed at Motorola as described in the letter that [Petitioner's counsel] provided to [him] on July 31st, 2008." PX13, pp. 13-14. On cross examination he clarified that Petitioner's work activities contributed to, but did not cause, Petitioner's carpal tunnel syndrome. PX13, p. 32. Dr. Williams understood Petitioner's job to be in "manual tune" and to require "extensive use of small screwdrivers to screw or tighten components or manipulate components that she estimated was 3,000 times a day; that it required twisting and turning of her wrist, as well as the use of air vibrating tools..." and the use of a "tweezers-type tool" and "some portion of pulling and snapping items together and in place and then filling them in boxes that weighed up to about 50 pounds." PX13, pp. 14, 16.

On cross examination, Dr. Williams testified that carpal tunnel syndrome can have various causes and that the causes are multifactorial. PX13, pp. 31-32. In Petitioner's case, he opined that Petitioner's job duties contributed to her carpal tunnel syndrome and he noted a combination of contributing factors including the repetitious nature of Petitioner's activities as he understood them, the inflammation/thickening of the flexor tendons encroaching upon the carpal tunnel space, the "suggestion and evidence that the use of vibratory tools can also contribute" to carpal tunnel syndrome, and because continuous gripping, grasping, pinching, fine motor activity and forceful activities on a repetitive basis can contribute to carpal tunnel syndrome. PX13, pp. 32, 34-36. However, Dr. Williams acknowledged that he had no specific information about the vibratory air tool used by Petitioner, how she used the tool, or with which hand or both she used the air tool. PX13, pp. 28-29. With regard to the use of vibratory tools, Dr. Williams acknowledged that use alone was insufficient to contribute to carpal tunnel syndrome development and it depended on degree, exposure, and so forth. PX13, p. 35. Similarly, he testified that the use of vibratory tools, gripping, and grasping should be continuous or a significant component of the work activities. *Id.* Dr. Williams also acknowledged that he did not view any video depicting Petitioner's job duties and his assumption that Petitioner's position was full time based on the "report" that Petitioner performed "3,000 repetitions a day." PX13, p. 29.

Regarding factors unrelated to work activities, Dr. Williams acknowledged that there is an increased incidence of carpal tunnel syndrome in older persons, in postmenopausal women, and in heavier persons as a secondary mechanism influencing the carpal tunnel. PX13, pp. 37-38. He also explained that while Petitioner's carpal tunnel symptoms were reportedly worse on the left in 2001, her December of 2001 EMG showed that she was electrophysiologically slightly worse on the right. PX13, pp. 39-40; *but see* PX5 (EMG findings showed evidence of a mild-moderate median neuropathy at the left wrist and evidence of the mild median sensory neuropathy at the right wrist).

Dr. Williams was unable to explain whether that symptomatology stemmed from Petitioner's carpal tunnel syndrome or cervical condition or both, but he suspected that some of the left-sided hand symptoms stemmed from Petitioner's cervical condition that were relieved after her cervical surgery which then "unmasked" the right-sided carpal tunnel syndrome. PX13, p. 40. To explain why Petitioner's right-sided symptoms increased despite the fact that Petitioner had not worked since 2004, Dr. Williams testified that once a person has chronic flexor tendon thickening daily use would continue to irritate the condition and Petitioner's symptoms probably would have been worse had she continued to work. PX13, pp. 40-41.

Dr. Williams also testified that continuous or prolonged keyboarding activities "that are not in, you know, modest and intermittent levels can exacerbate your symptoms much the way that other things that I asked her about here, talking on the phone, sleeping... driving your car, blow drying your hair, all those things can exacerbate your symptoms." PX13, pp. 41-43. He suggested keyboarding should only be done in small bits and in moderation if necessary. PX13, p. 43.

Regarding lateral epicondylitis, Dr. Williams testified that symptoms developed particularly in middle age as was Petitioner at the time of her examination and that this pain would not be masked by a cervical condition because it is not in the same anatomical distribution. PX13, pp. 44-47. Finally, Dr. Williams testified that Petitioner was capable of some work activity in May of 2008. PX13, p. 45.

Continued Medical Treatment

Petitioner underwent the recommended physical therapy evaluation on May 23, 2008. PX6; PX8. Dr. Sarantopoulos recommended that Petitioner undergo updated cervical spine imaging, updated EMG/NCV of the upper extremities for cervical radiculopathy and upper extremity referral entrapment neuropathy, physical therapy to address cervical symptomatology, trigger point injections for treatment of myofascial pain, additional medication for pain control, and, if her symptoms did not improve, cervical epidural injections. *Id.* It was noted that Petitioner was unfit to work as an assembly line worker secondary to her current symptoms and medication necessity that caused drowsiness. *Id.*

Petitioner testified that her temporary total disability benefits stopped in 2008 and her last check was February 6, 2008 until her benefits resumed June 23, 2008 when she went to a vocational rehabilitation assessment at Respondent's request. Tr. pp. 154, 57.

Dr. Chmell – Independent Medical Examination & Deposition[8]

On June 14, 2008, Petitioner underwent an independent medical evaluation at her attorney's request with Samuel Chmell, M.D. ("Dr. Chmell"). PX10; Tr. p. 62. Dr. Chmell submitted to a deposition on July 9, 2009. PX14. He is a board-certified orthopedic surgeon. *Id*, pp. 4-5, 24.

Dr. Chmell reviewed various medical records provided to him prior to rendering his opinions including the following: (1) a November 21, 2001 Arlington Heights MRI report; (2) Dr. Sarantopoulos' December 11, 2001 report; (3) an October 6, 2004 Neuro Open MRI report; (4) an Advanced Radiology Professionals report dated August 31, 2006; (5) a Professional Neurological report dated September 16, 2004; (6) Dr. Bauer's February 27, 2007 surgical report; and (7) Advocate Lutheran General hospital's records regarding Petitioner's surgery. PX14, pp. 7, 25-26. Dr. Chmell did not have any of Petitioner's medical records from 2001 and he reviewed a summary of records from Petitioner's counsel's office for treatment from November 14, 2001 through February 7, 2008. PX10; PX14, pp. 7, 27.

Petitioner reported that her job regularly and repeatedly required her to use her hands manipulating fine tuners and that she performed repeated lifting and pulling of boxes and steel fixtures. PX10. She also reported that she had been "performing repetitive motion activities with her hands and wrists for 27 years, but even more significantly, for the last seven years she has been working on a line assembly for transceivers doing pretty much the same thing on a daily, weekly, monthly and yearly basis. She state[d] that she use[d] the same tweezers and screwdrivers to perform the same assembly functions on a Motorola transceiver." *Id.* Further, Petitioner reported that she was unable to perform her regular job and that while her physicians recommended a job with restrictions and limitations it had not been provided to her by Respondent. *Id.*

Regarding her injury in October of 2001, Petitioner reported that "she was repeatedly lifting and pulling 50-pound boxes of steel fixtures. She developed left shoulder and arm pain. The shoulder and arm pain worsened

[8] Respondent's counsel also made *Ghere* objections to certain opinions rendered by Dr. Chmell at his deposition. PX14, pp. 12-13. The Arbitrator overrules Respondent's objections. *See* Footnote Number 9.

and radiated up into her neck. She then developed pain and swelling in her hands and wrists which became associated with numbness and tingling." *Id.* Regarding her injury in September of 2004, Petitioner reported that she "sustained an injury to her cervical spine with lifting and straining. She developed a severe sharp pain at the base of her neck on the left side and this pain persisted and worsened. The pain radiated all the way down her left arm and became constant, severe, shooting, and burning in nature. She could not move her neck or her arm." *Id.*

On examination of the cervical spine, Petitioner had moderate reduction of the normal cervical lordosis, muscle spasm and tenderness of the cervical paraspinal muscles left side more prominent, a healed but slightly reddened and hypertrophic surgical scar, positive Spurling's test on the left, and diminished range of motion. *Id.* On examination of the hands, Petitioner had slight diffuse swelling of both hands/wrists, full range of motion in both elbows and forearms and the right shoulder, and diminished range of motion in the left shoulder. *Id.* Both wrists demonstrated tenderness at the area of the carpal tunnel. *Id.* Petitioner had a positive median nerve compression test in both wrists and mild thenar atrophy on the right only as well as a positive Tinel's sign along the median nerve in both wrists and a positive Phalen's sign on the right at 15 seconds and 25 seconds on the left. *Id.* At his deposition, Dr. Chmell acknowledged on cross examination that Petitioner did not complain about either of her elbows during his examination and that he made no findings regarding Petitioner's elbows. PX14, p. 27. He also testified that Petitioner had no thenar atrophy on the left. *Id.*

Dr. Chmell diagnosed Petitioner with the following: (1) traumatic aggravation of cervical degenerative disc disease; (2) cervical disc herniations at C5-6 and C6-7 status post surgery; (3) bilateral carpal tunnel syndrome; (4) bilateral double-pinch syndrome secondary to the first three diagnoses; and (5) and rotator cuff tendinosis left shoulder. *Id.*

Regarding her cervical spine, Dr. Chmell opined that Petitioner sustained a cervical spine injury on both dates of accident which required surgery, that her medical and surgical treatment was reasonable and necessary, and that Petitioner had passed the point of maximum medical improvement. PX10; PX14, pp. 8-10. Regarding her bilateral carpal tunnel syndrome and tendinitis of the left shoulder, Dr. Chmell opined that they were causally related to Petitioner's long-term repetitive motion trauma at work to the upper extremities. *Id.* He also opined that both work accidents "likely contributed causally to the bilateral carpal tunnel syndrome and the left shoulder tendinosis[,]" and that Petitioner had double-pinch syndrome where the nerve lesion in her cervical spine likely further aggravated Petitioner's median nerve problem at the carpal tunnel. *Id.* Ultimately, Dr. Chmell testified at his deposition that Petitioner's bilateral carpal tunnel syndrome was caused by both her cervical injury and her repetitive work activity. PX14, p. 29.

At his deposition, Dr. Chmell testified that Petitioner's left-sided symptoms from her double-pinch syndrome in the neck and left arm were so overwhelming that Petitioner's right-sided hand symptoms did not become prominent until after her neck surgery, which alleviated the left-sided symptoms. PX14, pp. 10-13. He further testified that Petitioner's bilateral hand symptoms would not have necessarily improved when she was inactive after her cervical surgery because her bilateral hand condition was permanent and sometimes there is no explanation why such a condition does or does not improve with inactivity. PX14, pp. 17-18. The Arbitrator notes that Dr. Chmell did not provide these explanations about Petitioner's cervical spine condition masking her hand or bilateral hand symptomatology in his report.

In his report, Dr. Chmell also recommended bilateral carpal tunnel release followed by a course of therapy on each side and reassessment thereafter for the degree of permanent partial impairment. PX10. Otherwise without surgery he opined that Petitioner was at maximum medical improvement. *Id.* At his deposition and in response to a lengthy hypothetical question posed by Petitioner's counsel, Dr. Chmell testified that Petitioner's

bilateral carpal tunnel syndrome was related to her work activities because, in general, "...repetitive motion trauma can cause carpal tunnel syndrome, first of all. And I believe that [Petitioner] was subjected to repetitive motion trauma in her job to the extent that, in her, it did cause it. And I have seen other people to where it's caused it in the same fashion." PX14, pp. 13-17.

Dr. Chmell also opined at his deposition about the propriety of Petitioner's vocational re-training to perform computer keyboarding. PX14, pp. 20-21. He testified that such training would not be appropriate because it was usually repetitive in nature and caused the same sorts of problems that Petitioner had experienced with her hands and wrists. *Id.* He further testified that Petitioner was not employable because of her hands and that appropriate jobs are not readily available for undereducated people where at least considerable usage of the hands is involved. *Id.* If Petitioner had the recommended carpal tunnel repair, however, he opined that Petitioner may or may not thereafter be employable. PX14, pp. 22, 30. The Arbitrator notes that Dr. Chmell did not provide these opinions in his report, there is no evidence that he reviewed any vocational rehabilitation documentation before he rendered any of his opinions, and there is no evidence that Dr. Chmell was asked to render opinions regarding Petitioner's prospective employability in his report. PX14, pp. 20-22; PX10.

Continued Medical Treatment

On July 30, 2008, Petitioner returned to Dr. Stamelos complaining of numbness and pain in the hand all this time "and has not been listen [sic] to." PX5. He reiterated that Petitioner needed a carpel tunnel release to reach maximum medical improvement and possibly return to some kind of employment although Petitioner was on disability because she had given up on any return to work due to the cervical fusion and associated pain. *Id.* He also noted that Petitioner still felt that she was disabled for any kind of work. *Id.* No objective examination findings were noted at the time of this visit. *Id.*

A "physical residual functional capacity questionnaire" was also completed on July 30, 2008 by a chiropractor noting Petitioner's then-current symptomatology and history of injury. *Id.* It appears that this questionnaire was provided to Dr. Stamelos and Petitioner's SSD benefits legal counsel. *Id.*

On September 15, 2008, Dr. Williams authored a second narrative report in which he ultimately opined that "there was a significant relationship between [Petitioner's] carpal tunnel syndrome and her work activities at Motorola." PX9; PX13 (Ex. 3). He was unable to definitively opine further on the relationship between Petitioner's left lateral epicondylitis condition and her work, if any. *Id.*

In a narrative letter dated January 12, 2009, Dr. Stamelos authored correspondence at Petitioner's request addressed to "to whom it may concern[9]" in which he reiterated that Petitioner had bilateral carpal tunnel syndrome as a result of repetitive usage that required surgery. PX5; PX12, p. 60. He further noted that Petitioner had been awaiting approval for surgery of this essential procedure which was necessary for her manual dexterity inability to function. PX5. In addition, he stated that Petitioner's condition was being aggravated by "the cold and the chronicity." *Id.* He noted the good suggestion that Petitioner go to school to learn computer work and do keyboarding and data entry, but that people with impaired median nerve function and hand pain would find it almost impossible to function on a computer. *Id.* Dr. Stamelos suggested a delay such schooling and, instead, recommended the bilateral carpal tunnel release surgery so that Petitioner could then be vocationally rehabilitated. *Id.*

[9] This correspondence also appears to have been sent to Petitioner's counsel. PX5.

Petitioner returned to Dr. Stamelos approximately one year and nine months later on October 4, 2010 complaining of bilateral wrist pain. *Id.* Dr. Stamelos diagnosed Petitioner with a cervical strain, whiplash and radiculitis of the cervical spine as well as bilateral carpal tunnel syndrome. *Id.* He prescribed Norco and Darvocet, ordered continued "conservative management," and instructed Petitioner to return on an as needed basis for a reevaluation. *Id.* While Dr. Stamelos notes that he evaluated Petitioner in the office, the only objective examination results identified are Petitioner's blood pressure and pulse levels. *Id.*

Approximately 13½ months later, on November 16, 2011, Petitioner returned to Dr. Stamelos' clinic. *Id.* Petitioner cervical spine fusion was noted, and she reported chronic pain. *Id.* Dr. Stamelos noted that Petitioner probably has carpal tunnel, and later noted that she definitely had bilateral carpal tunnel syndrome as proven by objective testing, and that she could not return to work because she had continued dysfunctions and inability. *Id.* Notably, Dr. Stamelos noted that Petitioner had a right-hand dysfunction and that she suffers from depression despite treatment with a psychiatrist[10]. *Id.* Dr. Stamelos opined that Petitioner continued to be disabled by both psychological and psychiatric problems and the physical impairment of her arms. *Id.* He also noted that Petitioner was obese and unable to function because of hand and upper extremity pain. *Id.* He further noted that there were enough problems to make her disabled but they would not treat all of her issues, they would continue to follow her closely "upon her wishes," and that she had not been in for treatment for a significant amount of time although she felt that she was not well and wanted to be under the treatment of a qualified doctor. *Id.* He referred Petitioner back to her neurosurgeon [Dr. Bauer] for the cervical spine and noted that they could treat her for carpal tunnel, but that Petitioner was reluctant. *Id.*

Vocational Rehabilitation - Vocamotive

Petitioner testified that she underwent a vocational rehabilitation assessment at Vocamotive on June 23, 2008 at Respondent's request with Mr. Belmonte. Tr. pp. 57, 124-125, 153-154, 205. Petitioner testified that they attempted to teach her how to use a computer, keyboard and mouse to look for a job. Tr. pp. 57-58. Vocamotive assisted Petitioner in applying for employment and she applied for employment by phone as well. Tr. pp. 58-59. Petitioner did not obtain any job interviews, but did speak with prospective employers over the phone. Tr. p. 59. Petitioner testified she was instructed by Vocamotive not to tell prospective employers that she had a back operation or that she could not use her hands. Tr. p. 59.

The record reflects assessment, progress and discharge reports from Vocamotive between August 6, 2008 and March 9, 2009. RX6. During that time, Petitioner left before the end of her session, she did not attend sessions, she failed to apply for job leads provided, she did not participate in recommended vocational rehabilitation activities for various reasons including reported effects of her medication on her abilities, she voiced her opinion that she could not perform the recommended activities or obtain employment, she did not complete some job logs, and she was otherwise selective in her cooperation for various reasons in recommended vocational rehabilitation activities. *Id.*

Joseph Belmonte ("Mr. Belmonte") is a certified rehabilitation counselor at Vocamotive. Tr. pp. 194-198; *see also* RX5. Mr. Belmonte testified that when a client, like Petitioner, is referred to him his practice is to contact the client and his attorney and schedule an initial interview at which time he takes a detailed history. Tr. pp. 202-204. Then, he reviews the client's medical information and thereafter issues an initial evaluation report.

[10] The treating psychiatrist is noted as Dr. Saulecky, who is noted as having committed suicide. PX5. The only other reference to Dr. Saulecky (or Dr. Solecki) in this record is contained in the deposition of Petitioner's vocational rehabilitation counselor, Ms. Entenberg, who testified that she reviewed an unidentified number of his treating records for Petitioner. PX15, pp. 14, 26.

Tr. p. 204. In accordance with his practice, Mr. Belmonte conducted an initial interview with Petitioner on June 23, 2008. Tr. p. 205.

Mr. Belmonte testified that he did state or suggest to Petitioner that she should not inform prospective employers of her medical problems. Tr. pp. 249-250. Petitioner testified that Mr. Belmonte advised her that he could only address her back issues. Tr. pp. 59-60. She also testified that she told Mr. Belmonte that she was having problems with her hands. Tr. pp. 60-61.

Mr. Belmonte rendered his initial evaluation report and concluded that Petitioner was prospectively employable and he identified specific job targets for Petitioner reflected more specifically on page 12 of his report including unskilled to low semiskilled occupations such as basic food preparer, laborer within a fast food restaurant, certain cashiering positions, some ticket taker positions, parking lot cashier, some light housekeeping occupations, etc. Tr. pp. 205-214. Mr. Belmonte also considered an invalid functional capacity evaluation report in rendering his opinions. Tr. pp. 215-216. With regard to Petitioner's prospective wages, and given Petitioner's very narrow work experience and the kind of jobs being targeted for her, he projected that Petitioner could earn between minimum wage and nine dollars per hour. Tr. pp. 217-218.

Mr. Belmonte testified that there was some difficulty in initially implementing Petitioner's rehabilitation plan due to communication difficulties, which were resolved, and he met with Petitioner again on September 15, 2008. Tr. pp. 219-220. Mr. Belmonte also testified about some of Petitioner's characteristics including that she was always "very direct" and "does not hesitate to express her opinion or state her position with regard to what she believes she wants or may be entitled to or what she may expect." Tr. pp. 220-221. Mr. Belmonte further testified that at Petitioner's initial interview she asked him why he believed he could get her a job if her employer [Respondent] was not going to take her back. Tr. pp. 221-222. He noted that Petitioner's question was not problematic in and of itself, but he did sense after his discussion with her that Petitioner "was in fact prospectively resistant to the process because of what she stated she felt she wanted from the process which was medical treatment and not vocational rehabilitation." Tr. pp. 222-223. Mr. Belmonte further noted that "[Petitioner] manifested from time to time clear frustration and some resistance to being on time or being present on days when we could [effectively] treat her, but which may not have been her preference. She ultimately did not [effectively] job search on days unless she was actually in the office working under our supervision." Tr. p. 223.

Petitioner submitted to additional educational and aptitude testing by Jim Boyd ("Mr. Boyd") at Vocamotive's request and he generated a report on which Mr. Belmonte relied. Tr. pp. 224-226. On cross examination, Mr. Belmonte testified that Mr. Boyd chose the tests to administer to Petitioner which included Woodcock Johnson, Roman III, and Tests of Achievement. Tr. p. 244. As a result, Mr. Boyd identified Petitioner's aptitudes as follows: letter word identification at 6.7 grade level; reading fluency at 5.8 grade level; story recall at 3.6 grade level; mathematical calculation at 10.8 grade level; math fluency at 13.0 grade level; spelling skills roughly $9^{th}/10^{th}$ grade; writing fluency just below 6^{th} grade; and passage comprehension in reading at 4.5 grade level. Tr. pp. 244-246.

Mr. Belmonte testified that his expectations of Petitioner were conveyed to Petitioner at her initial interview and throughout the vocational rehabilitation process. Tr. pp. 226-228. Petitioner was receptive to Vocamotive's offer for computer assistance to help her find a job, but Mr. Belmonte testified that their job search efforts were not directed at finding Petitioner a job utilizing computers. Tr. pp. 228-229.

Petitioner's vocational rehabilitation through Vocamotive ended on March 9, 2009. Tr. pp. 125-126, 229-231. Mr. Belmonte testified that during the course of his conversations with Petitioner he acknowledged her feelings

about the vocational rehabilitation process and that medical treatment was her priority, but iterated that their services would be to her benefit in either actually finding her a job or ultimately determining whether there was a stable labor market for her. Tr. pp. 230-231. He further testified that he regularly attempted to actively enroll Petitioner in their process, but by March 9, 2009, "it became apparent that she was not going to change the orientation and her attitude, and I felt that at that point that I had made every reasonable effort that was likely to produce any change in the stance, and I felt that I was ethically obligated to advise both her and the people that were paying the bill that I really didn't see that it was cost effective to continue to move forward." Tr. pp. 230-231.

More specifically, Mr. Belmonte testified that Petitioner "consistently stated that her objective was medical treatment, surgery for the arms." Tr. p. 231. He testified that he told Petitioner that despite her complaints, which he acknowledged, he had no objectively, medically identified impairment to work with; "[i]n other words, no doctor had ever said that she was impaired with regard to the carpal tunnel syndrome or whatever might be happening in the upper extremities. So it was never identified by a physician that she couldn't do A, B, or C as an example. And without that, I didn't have [any job targets] that I could determine could be taken off the table...." Tr. pp. 231-233. On cross examination, Mr. Belmonte did acknowledge that Petitioner's reports of difficulty holding objects, dropping objects, clasping her clothes, could prospectively create a problem keyboarding or doing computer work. Tr. p. 247. He further acknowledged the fact that prospective pending surgery could be a significant and potentially complicating factor [in finding employment] for an applicant. Tr. p. 247.

Mr. Belmonte also testified that, while Petitioner was aware of their expectation that she would job search on her own, she did not job search on days that she was assigned to do so other than when she was at the Vocamotive office and he discharged her from their rehabilitation program for this reason. Tr. pp. 235-237. On cross examination, Mr. Belmonte acknowledged Petitioner's report of traveling to prospective employers Hallmark and Red Roof Inn, but her visits were unsuccessful. Tr. pp. 262-263. He testified that on one occasion Petitioner stated to him that "she did not mind coming here because it would make her look good in court[,]" and he explained that this statement is notable in the bigger context of his discussions with Petitioner where her focus was that she wanted surgery, she did not believe that she was employable, she did not want to work in food preparation, be a cashier, or change the date of her schedule from Tuesday to Wednesday even if they required her to do so. Tr. pp. 238-239.

On cross examination, Mr. Belmonte also acknowledged that his December 15th report reflects that he told Petitioner that he could not give her a decision on how she should proceed given the fact that the reported carpal tunnel was not a part of the medical situation that Vocamotive was able to use in analyzing her restrictions. Tr. p. 256. Mr. Belmonte did ultimately receive a report from Dr. Stamelos in which he indicated that working on or using a keyboard was not appropriate for Petitioner given the fact that she needed carpal tunnel surgery. Tr. pp. 258-259. He also acknowledged that Dr. Stamelos' recommendation for carpal tunnel release surgery would make driving in very cold weather troublesome for Petitioner. Tr. p. to 61.

As of December 5, 2008, Petitioner keyboarded eight words per minute, she was not doing very well with it, and Vocamotive subsequently discontinued the training because her level of education and language proficiency would never have led them to the performance of a job by Petitioner requiring anything other than some elemental, utilitarian data entry. Tr. pp. 259-260. Mr. Belmonte clarified on re-direct examination that Vocamotive discourages computer-only job searches and that it is not an indicator in the applicant's success in finding a job. Tr. p. 269.

Mr. Belmonte testified that he did not inquire of Respondent whether they had any positions within Petitioner's restrictions because he operates under the assumption that those issues have already been explored and exhausted once she was referred to him for vocational rehabilitation services. Tr. pp. 266-267; *see also* Tr. pp. 268-269.

Petitioner testified that she was never reimbursed for travel expenses, mileage, or tolls to get to and from Vocamotive, although Petitioner requested it. Tr. p. 61; *see also* Tr. p. 252.

Vocational Rehabilitation – Rehabilitation Service Associates

At Petitioner's counsel's request, she also saw Susan Entenberg ("Ms. Entenberg") at Rehabilitation Service Associates on April 16, 2009. Tr. p. 62; PX11; PX15. Ms. Entenberg completed a report thereafter dated May 22, 2009 and testified at a deposition on March 8, 2011. PX11; PX15.

In her report, Ms. Entenberg noted Petitioner's report that she injured herself on September 23, 2004 while lifting a box and she felt a sharp pain in her neck and left arm. PX11; PX15, pp. 7-8. Regarding Petitioner's earlier injury, Ms. Entenberg notes that Petitioner stated "that she sustained an injury to her left upper extremity, neck on October 10, 2001 while under the employ of Motorola." PX11. Petitioner also reported that she could not turn knobs or perform fine movements with her hands, did not chop/peel/cut, could only write for 10 minutes, and could only be at a computer for 15 minutes. PX11; PX15, p. 9.

Ms. Entenberg testified that prior to reaching her opinions she met with Petitioner and obtained information, she reviewed Petitioner's medical records to determine her work restrictions and recommendations, and she reviewed vocational testing records. PX15, p. 10. Ms. Entenberg concluded that Petitioner was not a candidate for further vocational rehabilitation services in consideration of the factors delineated in *National Tea v. Industrial Comm.* whether or not she had bilateral carpal tunnel surgery, that there was no stable labor market for her, and that if she could perform the jobs listed by Vocamotive Petitioner would only be able to earn $8.80 per hour. PX11; PX15, pp. 11-15.

Ms. Entenberg also testified that she understood that Vocamotive was having Petitioner go "to the office to look for jobs and go on-line and job search" and perform "computer activity on a sustained basis" which was not appropriate given Petitioner's report that she could not be on a computer for any length of time, the symptoms in her hands, and the recommendation for bilateral carpal tunnel surgeries. PX15, pp. 11-13.

On cross examination, Ms. Entenberg admitted she met Petitioner only once and that she primarily works with Petitioners in workers' compensation cases. PX15, p. 16. Ms. Entenberg stated that she understood Petitioner's English, although she had to listen, and that Petitioner was a little excitable, frustrated, and a little upset at times throughout their assessment. PX15, pp. 17-18. Ms. Entenberg also stated that Petitioner "felt that she was not capable of working, that she could not work." PX15, pp. 19-20. Ms. Entenberg further stated that she relied on Dr. Bauer's restriction that Petitioner could perform only sedentary work, but she was unable to locate that medical record at the deposition and she admitted that Dr. Bauer's June 14, 2008 report stated that he could *not* conclude what activities Petitioner could or could not perform based on the invalid December 5, 2007 functional capacity evaluation results. PX15, pp. 23-24, 26-28. Finally, Ms. Entenberg acknowledged that the cashier and food preparation worker positions identified by Vocamotive were appropriate unskilled placement jobs for Petitioner. PX15, pp. 29-30.

Petitioner testified that she has continued to look for work after March of 2009 on her own by either submitting applications in person or calling over the phone. Tr. pp. 126-128. She applied for part-time position with jewel

in her neighborhood in Arlington Heights and she called a couple of prospective employers that she found in the newspaper including a hotel for a desk clerk position. Tr. pp. 128-130. She testified that she does not believe she can work with her hands, but she can answer a phone. Tr. p. 130.

Continued Medical Treatment

Petitioner testified that she saw Dr. Stamelos on October 4, 2010 and she believes she has seen him two or three times thereafter. Tr. p. 126. Petitioner understood that Dr. Stamelos' bill was not paid. Tr. p. 146. The Arbitrator notes that the parties have stipulated that if Dr. Stamelos' bill has been paid Respondent would receive credit for that payment. AX1; AX2; Tr. p. 148.

Dr. Stamelos' Deposition

Dr. Stamelos submitted to a deposition on April 17, 2009. PX12. He is a board-certified orthopedic surgeon. *Id*, p. 5.

Dr. Stamelos testified that Petitioner described doing many things at work that were manual, repetitive, and even lifting. PX12, p. 11. He testified that Petitioner reported using tools, screwdrivers, punches and assembling or snapping things together then putting them in a box or wrapping them up "or whatever it is and then at the end she had to put the box on a belt or something and put it on a skid." *Id.* Dr. Stamelos summarized that Petitioner had a variety of duties working the upper extremities and that she could not "work lifting and bending and twisting without the contributions of the shoulder, the neck and the hand." *Id.* On cross examination, Dr. Stamelos testified that his understanding of Petitioner's work was all based on what Petitioner told him. PX12, pp. 61-62. Dr. Stamelos added that "I have many Motorola patients in the past. So my experience with Motorola was repetitive usage of their extremities. But I never actually had a nurse visit me or somebody giving me a job description of [Petitioner's] work." PX12, p. 62.

Dr. Stamelos testified that Petitioner's initial complaints were cervical spine stiffness and pain, left shoulder pain, and tingling in both hands, primarily on the left. PX12, p. 7. On cross examination, Dr. Stamelos conceded that his November 14, 2001 note makes no mention of carpal tunnel condition or findings with regard to Petitioner's hands. PX12, pp. 38-40. He further conceded that his note of Petitioner's December 5, 2001 visit makes no mention of carpal tunnel although he explained that the C6/C7 innervates the same area of the hand that the carpal tunnel innervates and he did not have any specific objective testing of carpal tunnel at that time. PX12, p. 41.

On cross examination, Dr. Stamelos testified essentially that Petitioner's very large herniation at C6/C7 on the left was masking Petitioner's mild to moderate carpal tunnel syndrome through February 20, 2002. PX12, pp. 42-43. He also testified that Petitioner complained more about left-sided symptoms than right-sided symptoms through March of 2002. PX12, p. 48. Then, Dr. Stamelos further testified on cross examination that Petitioner was complaining more about right-sided symptoms in 2009, but qualified his response by stating that Petitioner's left-sided symptoms masked Petitioner's right-sided symptoms. PX12, p. 48.

Petitioner did not show Dr. Stamelos how she performed her work. PX12, pp. 11-12. Dr. Stamelos merely noted that Petitioner did thousands of maneuvers per day automatically according to her report. *Id.* Dr. Stamelos opined that various maneuvers performed repetitively by Petitioner is the "most consistent and accepted way to create carpal tunnel." PX12, pp. 12-13. Dr. Stamelos also testified that Petitioner never stopped complaining about her hands, but "[w]hen I took her off of work, her symptoms subsided, by [sic] her condition didn't improve." PX12, p. 13. On cross examination, Dr. Stamelos testified that he took Petitioner

off work even when her carpal tunnel syndrome was not improving because Petitioner had multiple orthopedic problems and a psychiatric problem. PX12, p. 59. He testified that he would not have necessarily taken Petitioner off work solely for the carpal tunnel syndrome and might have only restricted her work, but he also testified that "Dr. Bauer also had a lot to do with it." PX12, p. 60.

Dr. Stamelos testified Petitioner's neck and shoulder symptoms improved after her neck surgery, but "there has been a consistency to the symptoms of her hand. When she didn't work or didn't use her hand, the symptoms are not as strong but she still has difficulty with cold, when she sleeps, she has difficulty buttoning her buttons. In other words, the condition is ongoing and stagnant and nonimproving. In other words, the intensity of the symptoms worsened with her doing anything manual, but if she doesn't do anything, she doesn't get an improvement, she just has the carpal tunnel condition, primarily on left and some on the right." PX12, pp. 18-19.

To explain why Petitioner's carpal tunnel syndrome did not improve while she was away from her job, Dr. Stamelos testified about the deterioration of the ligaments, bones, and tendons in the carpal tunnel due to overuse, age, gender, and other factors such that "once you have carpal tunnel you cannot not have carpal tunnel." PX12, pp. 19-22. He further testified that while Petitioner "would have had carpal tunnel" given the type of work that she was doing at 20 years old, her carpal tunnel syndrome has nothing to do with her gender and normal hormonal changes at her age, but rather it was in addition to her predisposing factors. PX12, pp. 22-23. On cross examination, Dr. Stamelos acknowledged that there were many studies showing a peak of carpal tunnel symptomatology in women during menopause between 45 and 55 years of age, however he believed that there had not been any studies regarding Petitioner's particular body habitus (i.e., approximately 190 pounds and 5'3 tall) and the incidence of carpal tunnel. PX12, pp. 47-48. He also testified that the lack of surgical intervention for carpal tunnel syndrome could have had an impact on the severity of Petitioner's condition and that Petitioner continued to refuse such surgery through July of 2003. PX12, pp. 46, 49-50.

Regarding Petitioner's capability of returning to work, Dr. Stamelos testified that "it would have to be one of these special jobs that would be a job that would have to -- we do a functional capacity evaluation and she would just sit and watch a TV screen or an inspector or somebody, in other words where there is no use of the hand. And then there is issue of getting to work and coming home and there is an issue of cold versus warmth. In other words the hands are very sensitive to the cold, so it would have to be a designer job for her to work." PX12, p. 25.

In response to a lengthy hypothetical question posed by Petitioner's counsel, Dr. Stamelos testified that Petitioner was "the poster girl for repetitive motion carpal tunnel disease. There is no question in my mind that her condition, 3000 manual repetitive usage of her extremities a day, doing the work at Motorola, contributed and caused her carpal tunnel primarily in the left, but also on the right." PX12, pp. 25-29. He further testified that the same repetitive conditions that cause carpal tunnel can also cause lateral epicondylitis in some people and that the conditions were irreversible and could only be corrected with surgery. PX12, pp. 29-30. According to Dr. Stamelos, Petitioner did not know what carpal tunnel was until she saw him and that when he "told her about the surgery she was completely against it because she thought I was making it up." PX12, pp. 30-31. Ultimately, Dr. Stamelos testified that he was "positive" that Petitioner's work activities contributed or caused Petitioner's carpal tunnel. PX12, p. 36.

Dr. Stamelos opined that Petitioner could not return to a repetitive nature job at that time. PX12, p. 30. On cross examination, he clarified this opinion and testified that Petitioner would never be able to return to repetitive usage work without an operation. PX12, p. 46.

Dr. Stamelos opined that the vocational training that Petitioner was receiving for computer usage was inappropriate because Petitioner's carpal tunnel syndrome was a deterrent for manual work, data entry, or computer work. PX12, p. 30.

Elli Taylor

Elli Taylor ("Ms. Taylor") testified that Petitioner's counsel had previously represented her in a worker's compensation case against Respondent related to her left hand/thumb while working on a different line from Petitioner. Tr. pp. 159-160, 174. Ms. Taylor testified that her case was settled. Tr. p. 160.

Ms. Taylor testified that she worked in the same department as Petitioner for a long time. Tr. p. 160. She also viewed Respondent's Exhibit 4 and testified that it only partially accurately portrayed what Petitioner did at work. Tr. p. 161. Ms. Taylor testified that Petitioner worked a lot on laser, which was shown in a little bit of the video, but Petitioner also did a lot of work in manual tune and there were only a few people that could do that "[b]ecause it's very, very difficult." Tr. p. 161. Ms. Taylor observed approximately three or four other employees, including Petitioner, performing manual tune duties while Ms. Taylor worked for Respondent, but she did not ever perform manual tune duties after one unsuccessful attempt to do so. Tr. pp. 162-167, 170, 181-182.

Ms. Taylor testified that she observed Petitioner performing work on laser and operating about four machines. Tr. p. 170. She testified that she did not observe others operating four machines. Tr. p. 170. Ms. Taylor also testified that she observed Petitioner working in pick and place once in a while and very little "because it's one of the easier jobs." Tr. p. 172.

In addition, Ms. Taylor testified that everyone did FQA/inspection and that whenever there was a problem, such as an injury, Respondent would place the employee in inspection because it was easy and not hard on the neck or back or hands because the employee is looking at something through a magnifying glass to determine if all the parts are in their proper place. Tr. pp. 172-173.

On cross examination, Ms. Taylor testified that in 2001 she worked in the microcircuits department for approximately 3-4 years and her supervisor with Keith Lulik. Tr. pp. 176-177. Ms. Taylor testified that she was transferred and believed that she still worked in the same area, microcircuits, in 2004 for one year under another supervisor, Maria. Tr. pp. 177-178. Ms. Taylor was never supervised by Petitioner supervisor, Frank Neugebauer. Tr. p. 178.

Ms. Taylor also testified that while she was employed by Respondent she did laser trimming, pick and place, and FQA. Tr. p. 181. Ms. Taylor testified that FQA and pick and place are light jobs, but laser trim is not because the employee was standing—although she also testified that the employee is not really lifting anything. Tr. p. 182.

Additional Information

Petitioner testified that she was terminated from her position with Respondent and she has not worked since September 24, 2004 for any employer. Tr. pp. 55, 119. Petitioner testified that she has not received any other workers' compensation [benefits payments] other than those to which she testified at trial. Tr. p. 55.

Petitioner remains under the care of a primary care physician and occasionally sees Dr. Stamelos. Tr. p. 56. She also testified that she is ready willing and able to undergo the recommended carpal tunnel surgery. Tr. p. 61.

As of the date of her testimony, Petitioner testified that she is in pain and cannot sit or stand for more than a certain amount of time because of her back. Tr. pp. 63-64. She also testified that she lost the ability to move her body more than 40% and that she has to move her whole body to the left or to the right, that she has difficulty bending her head in the front or in the back to wash her hair, that she cannot lift herself from sleep (that she has to reach for something like the bed board in order to get up from the bed), that she suffers while it is raining, and that she is on pills. Tr. pp. 63-64.

With regard to her hands, Petitioner testified that they were numb, that she loses objects from her hands, that she sometimes lacks feeling in her hands when handling money, that her thumb is tingling like it is stuck, and that she cannot move her right thumb at all. Tr. pp. 64-65. She also testified that she experiences this in both hands, but that her right hand is worse. Tr. p. 65.

Petitioner can drive her van, but testified that she cannot sit for a long time and drives only for shopping and similar activities because of pain that "is killing her" in the upper thoracic lower cervical spine area. Tr. pp. 131-134.

ISSUES AND CONCLUSIONS

The Arbitrator hereby incorporates by reference the Findings of Fact delineated above, and the Arbitrator's and parties' exhibits are hereby made a part of the Commission file. After reviewing the evidence and due deliberation, the Arbitrator finds on the issues presented at trial as follows:

In support of the Arbitrator's decision relating to Issue (F), whether the Petitioner's current condition of ill-being is causally related to the injury, the Arbitrator finds the following:

Cervical Spine and Left Arm Radiculopathy

The Arbitrator notes that the parties do not dispute causation regarding Petitioner's cervical spine injury stemming from either date of accident. Notwithstanding, the Arbitrator finds that Petitioner's cervical spine condition and the associated left arm radiculopathy is causally related to her undisputed accident on October 10, 2001 which was aggravated on the date of her second undisputed accident, September 23, 2004.

Petitioner's testimony about the traumatic mechanism of injury occurring on October 10, 2001 and her onset of symptoms is corroborated by record evidence, supported by contemporaneous and objective test results, and supported by objective clinical findings made by various treating physicians and independent medical examiners. Regarding her first accident, Petitioner testified that she felt a hard, stinging pain in her back when she pulled a box of fixtures while working on the pick and place assembly line. Regarding her second accident, Petitioner testified that she was lifting boxes on September 23, 2004 when she hurt herself and felt a sharp pain. Overall, the record corroborates Petitioner's testimony about these traumatic mechanisms of injury at trial as well as her symptoms from each date of injury through the date of her testimony at arbitration.

Furthermore, there is no evidence that Petitioner had any cervical spine injury, left shoulder injury, or left-sided symptoms radiating down to her mid-arm prior to her first accident. The record contains credible evidence that Petitioner's second accident aggravated her cervical spine condition—although Petitioner initially refused recommended surgical intervention for years—given Dr. Bauer's objective findings throughout his treatment of Petitioner particularly when viewed in light of the Section 12 opinions rendered by Drs. Skaletsky and Levin. While the Arbitrator notes that Petitioner's treating physician, Dr. Bauer, placed her at maximum medical improvement regarding her cervical spine condition on October 31, 2007, and that Dr. Levine also opined that Petitioner had reached maximum medical improvement, the parties proceeded to trial pursuant to Petitioner's Section 19(b) and Section 8(a) motion and a finding on the nature and extent of Petitioner's injuries is premature.

Based on the foregoing and the record as a whole, the Arbitrator finds that Petitioner's current cervical spine condition and associated left arm radiculopathy is causally related to her undisputed accident on October 10, 2001 which was aggravated on the date of her second undisputed accident, September 23, 2004.

Bilateral Carpal Tunnel Syndrome

The Arbitrator finds that Petitioner failed to meet her burden of proof to establish a causal connection between her current bilateral carpal tunnel syndrome condition and either accident at work. Specifically, the Arbitrator finds that Petitioner's testimony at trial with regard to this condition is not credible, overall, and that it is materially and repeatedly inconsistent with other record evidence. Moreover, the Arbitrator finds that the opinions of Petitioner's treating physicians, Dr. Stamelos and Dr. Williams, as well as the opinion of Petitioner's independent medical examiner, Dr. Chmell, are unpersuasive given the record as a whole.

First, the Arbitrator addresses Petitioner's testimony about her assigned job duties and actual work activities as compared to record evidence; it is erratic, at best. The record contains varied, vague and contradictory reports made by Petitioner at trial about the job duties she was required to perform and the work activities in which she actually engaged when compared to reports made by her to treating physicians and Section 12 examiners. The record is similarly incongruent as to the amount of time (i.e., hours per day, days per week, etc.) that Petitioner spent performing any particular duty (i.e., using tweezers/pliers, lifting up to 50 lbs., using screwdrivers with 15-20 lbs. force, using vibratory tools, etc.) in any position (i.e., pick and place, laser, inspection/repair, light duty positions, etc.) and for how long she did so (i.e., weeks per month, months per year, etc.). While Petitioner is not a sophisticated claimant and she might not reasonably be expected to recall exact details about her job duties and actual work activities during exact time frames over many years, it is reasonable to expect that Petitioner could consistently recall general details of her job duties and work activities performed during general timeframes that generally correlate to reports made by her to physicians since her first injury in 2001. Given the disparity in the record regarding whether Petitioner injured herself in two traumatic incidents or whether she sustained repetitive trauma injuries as she now claims stemming in whole or in part from her work activities, Petitioner's evidence about her job duties and actual activities is significant. The Arbitrator finds that Petitioner's testimony is wholly inconsistent with record evidence about her job duties and the work activities that she actually performed and, thus, is not credible.

To wit, the record reflects the following varied, vague, inconsistent and/or directly contradictory reports offered by Petitioner: (1) she worked in manual tune for several years approximately 80% of the time 10 hours per day/5 or 6 days per week and she worked in laser much of the remaining time and, limitedly, filled in the pick and place and inspection/repair positions; (2) when she worked in manual tune, she used a small screwdriver-type tool on small circuit boards of differing sizes and she turned her fingers all day long in all directions; (3) when she worked in laser she did so approximately 8-10 hours per day, 4-5 days per week in 2002 and 2003; (4) when she worked in laser she operated four laser machines simultaneously by going from one machine to another and "[j]umping like crazy, around" however she admitted that when she worked in laser she only used a computer mouse; (5) when she worked in laser, she worked four machines, which is contradicted by an October 14, 2004 incident report reflecting that she was working three machines which was crossed out; (6) she worked using an air gun with 15-20 pounds of pressure to close transceivers with screws while in the repairs position, although there is no specification for how often or for how long; (7) in the FQA position she worked in a seated position and used tweezers/brushes/pliers to inspect/clean circuit boards of varying sizes and types that came down a conveyor belt before placing completed ones into a box; (8) in the pick and place position she would snap a part onto a circuit board that came to her on a conveyor belt then placed assembled boards back onto to the conveyor belt; (9) she was lifting 50 lbs. every twenty minutes in her full duty job before her first injury, although there is no specification about what that job was or how long she was in that job; (10) she worked "light duty" after her return to work [in August of 2002] until April of 2004; (11) she only worked "light duty" for one or two weeks after her return to work in August of 2002 before she was performing full duties again, which is contradicted by an October 2, 2002 note and another February 25, 2004 note of Dr. Stamelos that Petitioner was still working light duty; (12) Respondent never accommodated her restrictions with light duty work and she was lifting up to 50 lbs. again before her second injury on September 23, 2004, although there is no specification about what that job was or how long she was in that job; and (13) she worked on an assembly line performing unspecified repetitive motion activities with her hands and wrists for 27 years and she had worked primarily with tweezers and screwdrivers while working on transceivers "doing pretty much the same thing" on a daily/weekly/monthly/ yearly basis since approximately 2001.

As reflected in the findings of fact, the aforementioned list of inconsistencies between Petitioner's reported job duties and actual work activities before and at the time of both accidents at work is not exhaustive. The

variations in Petitioner's reports on this subject at trial are evident when comparing her testimony on direct and cross examination as well as when comparing her testimony overall with reports that she made to treating physicians and independent medical examiners in contemporaneously created records. Petitioner's reports about her job duties and work activities are also inconsistent with and contradicted by written job descriptions. In particular, while the job descriptions offered by Petitioner require repetitive movements, none of them require sufficient force or significant use of vibratory tools as opined by Dr. Fernandez to make the repetitive motions a contributing factor in the development of Petitioner's bilateral carpal tunnel syndrome. In any event, the variations in reported job duties bear unfavorably on Petitioner's credibility.

Moreover, Petitioner's physicians, Dr. Stamelos, Dr. Williams and Dr. Chmell (an independent medical examiner), all relied on Petitioner's reports about her job duties and actual work activities and/or a summary of these created by her attorney in opining that causal connection exists between her condition and both accidents at work. The work activities performed by Petitioner as reported by her vary from one physician to the next and none of the aforementioned physicians reviewed Petitioner's written job descriptions, physical demand requirements, or viewed any video depicting any of the types of work activities in which Petitioner was required to engage at any point during her employment with Respondent.

Second, the Arbitrator notes that the contradictions contained in the record about the mechanisms of Petitioner's injuries. While accident is not in dispute, the Arbitrator notes that Petitioner's applications for adjustment of claim in both cases, the histories given by Petitioner throughout her treatment, and the information made available to physicians opining on causal connection initially allege traumatic injuries and *not* repetitive trauma injuries. Petitioner's reports on this subject are as disparate as her reports about her job duties and work activities (e.g., Petitioner's report to Dr. Chmell on June 14, 2008 approximately 7 years after her first injury that she injured herself on October 10, 2001 when she was repeatedly lifting and pulling 50-pound boxes of steel fixtures resulting in left shoulder and arm pain is singular and contradicted by several other versions of the mechanism of injury on that date throughout the record). In at least one instance, Petitioner also refused to provide historical information to a physical therapist during a functional capacity evaluation about her September 23, 2004 injury. PX6 (On December 5, 2007, Petitioner reported that she had a work related injury to her neck on September 23, 2004, but "**refused to give the therapist any additional history.**" (**emphasis** in original)). The FCE was deemed invalid due to submaximal effort. While the discrepancies regarding the mechanisms of injury alone might not be dispositive even on the issue of accident, it is limitedly relevant here where the dispute centers on whether Petitioner's bilateral carpal tunnel syndrome developed in whole or in part as a result of repetitive trauma and not any traumatic injury. The Arbitrator finds that these discrepancies further erode Petitioner's credibility and they bear on the reliability of the opinions rendered by Dr. Stamelos, Dr. Williams and Dr. Chmell because they relied primarily on Petitioner's reports.

Third, the Arbitrator addresses the causal connection opinions of Dr. Stamelos, Dr. Williams, Dr. Chmell, and Dr. Fernandez. The first three physicians opine that a causal connection exists between Petitioner's bilateral carpal tunnel syndrome and one or both work injuries. Dr. Fernandez opines that no causal connection exists; the Arbitrator agrees.

Dr. Stamelos fervently contends in his deposition, in narrative reports, and throughout his treating records that Petitioner's repetitive work activities contributed to and caused her bilateral carpal tunnel syndrome. The Arbitrator finds that Dr. Stamelos' opinion is not persuasive and gives it no weight.

At trial, Petitioner testified that she was injured on October 10, 2001 when she pulled fixtures from below the assembly line to place them on the table while working the pick and place position. She then experienced a

"hard pain" in her back. Given the record as a whole, it is apparent that Petitioner sustained a traumatic injury resulting in immediate onset of symptoms that she localized to the back of her neck and/or her left shoulder which was ultimately diagnosed and treated as a cervical spine condition. In any event, the fact that Petitioner sustained a traumatic injury is corroborated by the record overall and it is inconsistent with Dr. Stamelos' medical records that Petitioner purportedly reported a repetitive trauma injury from the beginning.

On November 14, 2001, Dr. Stamelos' records show that reported an injury to her left shoulder due to repetitive usage. His records from this date forward are consistently inconsistent regarding whether Petitioner injured herself in a traumatic incident while pushing/pulling/lifting weight, or if she had a traumatic onset of pain secondary to repetitive usage of the left upper extremity (or both extremities, for that matter). Contemporaneous diagnostic records reveal that Petitioner reported a traumatic pushing and pulling injury and not an injury stemming from repetitive usage as Dr. Stamelos contends. Even the MRIs and EMG/NCV that Dr. Stamelos ordered were performed to rule out left shoulder impingement versus a rotator cuff tear as a result of a pushing/pulling injury and not to diagnose any repetitive trauma medical condition based on left-sided or certainly bilateral carpal tunnel syndrome symptomatology.

These important contradictions are highlighted in Dr. Stamelos' deposition. He testified that, while Petitioner told him that she injured herself secondary to pushing a lot of weight, "*[w]ell, that's what she said in Greek, **maybe I misinterpreted. What she meant was repetitive motion. There is no Greek word for repetitive motion**. Pushing a lot of weight or doing a lot of work, work with her hands of course.*" PX12, p. 51 (***emphasis added***). He added, "***I think** there is weight involved*, but ***I think she meant** just an awful lot of work went through her hands*, that would be a good way to describe it. [.... And, there] was lifting in her job. ***She said she** had to lift some boxes after she filled them, but **she said** most of her work was doing repetitive motion. And somebody, **I think, I don't remember**, somebody **I think** it was this doctor who saw her, said she did like 3,000 maneuvers a day or something*[, which was Petitioner's estimate to that doctor and probably to him as well.]" PX12, pp. 51-52 (***emphasis added***). In addition to the self-evident inconsistencies and liberal interpretations made by Dr. Stamelos about what Petitioner said and what he thinks she meant to say, the Arbitrator notes that a simple internet search for the Greek-English translation of the word "repetitive" renders several immediate results including one for the phrase "done repeatedly."

On cross examination, Dr. Stamelos gave a general differential diagnosis explanation to account for his treatment and focus on Petitioner's central issue (i.e., the neck/left shoulder) instead of her left hand and then both hands for suspected carpal tunnel syndrome. In addition to the context explained above, Dr. Stamelos' otherwise reasonable explanation for his initial treatment and diagnostic focus is not persuasive in this case when his records so blatantly lack in objective clinical findings at most visits such that his diagnoses and ultimate causal connection opinions are reliable. Based on the foregoing, the Arbitrator finds that Petitioner did not report any repetitive usage injury to Dr. Stamelos, but rather that he inferred and concluded as much without relying on objective medical evidence in support thereof.

In addition, Dr. Stamelos admits that he did not review Petitioner's specific job description(s), he is unsure of what exactly Petitioner did "3,000" times per day over 27 years, and Petitioner did not demonstrate to him the repetitive activities that she performed at work. He admits that he had many of Respondent's patients in the past so his "experience with Motorola was repetitive usage of their extremities." He also admits that in at least one instance he essentially gave Petitioner the opinion that she wanted in a narrative report because he "would just rather write it and get her off [his] back than argue with her." PX12, pp. 50-51.

Similarly, the Arbitrator finds that Dr. Stamelos' causal connection opinion regarding Petitioner's bilateral carpal tunnel syndrome and her September 23, 2004 injury is unpersuasive. Dr. Stamelos failed to note

objective clinical findings at most of Petitioner's visits to support his opinion. He relied on Petitioner's unreliable and inconsistent reports about the mechanism of injury. Dr. Stamelos also relied on Petitioner's inconsistently reported job duties and actual work activities, while opining on causal connection without the benefit of any actual job description or other indication of Petitioner's actual work activities. Moreover, as reflected in his deposition testimony, Dr. Stamelos had already opined that Petitioner's work activities caused her carpal tunnel syndrome and he steadfastly maintained his causal connection opinion regarding Petitioner's September 23, 2004 injury while relying primarily on Petitioner's unreliable reports to him.

For example, at trial Petitioner testified that she sustained a traumatic injury while lifting boxes when she hurt herself and felt a sharp pain. Petitioner's testimony on direct and cross examination and her handwritten incident report dated October 14, 2004 conflict regarding the position that she worked when she was injured, manual tune or laser. In further contrast, Dr. Stamelos' records contain two different progress notes dated September 27, 2004 in which Petitioner reportedly sustained "a repetitive motion injury while working in the assembly line" and that she returned after an injury at work four days earlier with "quite significant" pain complaints of neck stiffness, pain, and radiculopathy "that has occurred since the time of the injury while working at Motorola." Dr. Stamelos' most contemporaneous progress notes to Petitioner's September 23, 2004 injury do not specify Petitioner's job at the time of her injury or any objective clinical findings or measurements to support his contention that Petitioner's previously diagnosed bilateral carpal tunnel syndrome was somehow aggravated by the incident at work.

In fact, Dr. Stamelos admitted on cross examination that Petitioner had no hand complaints only four days after her second work accident all the way through November 17, 2004. He further admitted that he did not treat Petitioner for carpal tunnel syndrome from the second half of 2004 through 2007, although he qualified his response by stating that he treated Petitioner for the more important cervical injury. Indeed, Dr. Stamelos could not reasonably treat Petitioner for bilateral carpal tunnel syndrome as his records do not refer to Petitioner's carpal tunnel condition until July 31, 2006 and they are similarly devoid of reference to objective findings through that date and thereafter supporting his ultimate, albeit conclusory, opinion that Petitioner's work activities somehow aggravated Petitioner's already causal connected bilateral carpal tunnel syndrome.

Dr. Stamelos' records are also conspicuously devoid of objective clinical findings or corroborative symptomatology complaints made by Petitioner to support his conclusion about the relatedness of Petitioner's bilateral carpal tunnel syndrome to her work activities after either injury at work. Even assuming that Petitioner's report of numbness, pain and tingling radiating down to the first three digits of the left hand on November 14, 2001 and December 5, 2001stemmed from Petitioner's left sided carpal tunnel syndrome as a result of either a traumatic or a repetitive trauma injury, Dr. Stamelos' records are devoid of any physical examination findings related to the left hand or wrist, much less the right hand or wrist, through the majority of his treatment of Petitioner. In fact, the first time that Dr. Stamelos' records refer to carpal tunnel syndrome is on December 11, 2001 in Petitioner's EMG/NCV results. Prior to and even after this date, Dr. Stamelos' records do not reference any Tinel's, Phalen's or any other objective examination findings to clinically correlate Petitioner's left hand numbness and tingling into the first three digits with her repetitive work activities as opposed to radiculopathy stemming from Petitioner's later-diagnosed cervical condition. Dr. Stamelos even admits in his deposition that Petitioner never showed him exactly what she did at work and he never reviewed any job description for Petitioner such that he could plausibly opine based on objective medical evidence that her left (or right) hand condition resulted even in part from activities at work.

Additionally, Petitioner did not complain of any traumatic injury to the right arm, hand or wrist at any time, nor did she report any right hand/wrist symptomatology until March 20, 2002 when she had been off work for a little over four months and she first reported "numbness and tingling *in the bilateral hands*, left hand worse than

right." PX5 (*emphasis added*). Thereafter, on October 2, 2002, while Petitioner was working light duty Dr. Stamelos diagnosed Petitioner with "[c]ontinued bilateral hand pain, carpal tunnel syndrome and cervical syndrome" even though the work note provided for her only reflects "cervical strain, radiculitis" and different work restrictions than those identified in Dr. Stamelos' progress note. PX5. Petitioner did not seek medical treatment again for nine months until July 2, 2003 and then again for approximately eight months until February 25, 2004 at which time Dr. Stamelos noted that Petitioner would either need surgery at C5-C7 or permanent work restrictions to accommodate the herniated discs in her neck and left radiculopathy, but he did not mention Petitioner's carpal tunnel syndrome, any complaints by Petitioner of bilateral hand pain or right-sided symptoms, much less any objective clinical findings on examination of Petitioner. Approximately one month later, on March 31, 2004, Petitioner returned reporting ongoing neck pain, but she did not report pain in either arm or hand. Three months afterwards, on June 30, 2004, Dr. Stamelos noted that Petitioner had carpal tunnel syndrome and needed surgery, that she had low back pain, and cervical spine syndrome due to herniated discs at C5-C7 "all from an injury on October 10, 2001 at Motorola." PX5. Petitioner's only report of low back pain prior to this time was on July 2, 2003, approximately one year and nine months after her work accident, and now one year after her only complaint of low back pain on July 2, 2003.

Another three months later (and four days after her second accident) on September 27, 2004, Dr. Stamelos noted that Petitioner returned after sustaining "a repetitive motion injury while working in the assembly line and pushing fixtures." PX5. This mechanism of injury is similar to that reported by Petitioner on cross examination and noted in Dr. Stamelos' November 14, 2001, July 2, 2003, and February 25, 2004 progress notes. He diagnosed Petitioner with herniated discs at C5-C7, but makes no mention about carpal tunnel symptomatology or examination findings in either arm or hand other than radiating symptoms to the left upper extremity from the cervical condition. Dr. Stamelos' records contain two different progress notes dated September 27, 2004, the second of which refers to Petitioner's September 23, 2004 accident after which she complained of significant neck stiffness, pain, and radiculopathy that Dr. Stamelos noted "has occurred since the time of the injury while working at Motorola. The radiculopathy and the pain was so severe that she had to get an emergency appointment to see me where I will try to treat her for these new symptoms that she has developed." PX5. Dr. Stamelos' records, however, are unclear about the new symptoms that Petitioner reported on September 27, 2004, whether they involved Petitioner's bilateral hands, and no objective examination findings are noted that distinguish Petitioner's new symptoms from those resulting from the October 10, 2001 injury. Again, Dr. Stamelos does not reference any symptomatology or diagnoses in any other body part whatsoever and no objective evaluation of Petitioner's hands was identified in the records. Dr. Stamelos' records continue to be vague through October 13, 2004 and refer to a continuation of the "current course of management" without any objective clinical examination findings regarding Petitioner's neck, arms, or hands in reference to any of Petitioner's reported symptomatology. As reflected in the findings of fact, the aforementioned list of missing or inconsistent information contained in Dr. Stamelos' records is not exhaustive. Based on all of the foregoing, the Arbitrator finds that Dr. Stamelos' causal connection opinions with regard to either of Petitioner's work accidents are unpersuasive and gives them no weight.

Finally, the Arbitrator gives little weight to the opinions of Dr. Williams and Dr. Chmell. Dr. Williams' causal connection opinion is predicated on a single examination, limited medical records available for review, and incomplete, if not completely inaccurate, information about Petitioner's work activities. Dr. Williams admitted that he did not have Petitioner's actual job description to consider, he did not view any video depicting any of Petitioner's job duties, and he also testified that he based his opinion on his understanding that Petitioner worked in manual tune which required repetitive forceful activities, extensive use of small tools, continuous gripping/grasping/pinching/fine motor activities, and the use of vibratory tools garnered from Petitioner's reports to him and a summary of work duties compiled by Petitioner's counsel. According to her testimony at trial, Petitioner was not working on manual tune or performing related functions at the time of either incident in

2001 or 2004. As explained in detail above, the job duties and work activities reported by Petitioner conflict throughout the record.

Dr. Williams also admitted that there was an increased incidence of carpal tunnel syndrome stemming from genetic factors including age, gender (in postmenopausal women), and increased weight. Regarding the curious increase in Petitioner's symptomatology while she was not at work, Dr. Williams contended that her bilateral carpal tunnel syndrome was "masked" by the cervical spine condition and related symptomatology and that Petitioner initially sustained a "double-pinch" or "double-crush" injury. Dr. Williams' opinion does not, however, adequately explain how Petitioner's left sided cervical spine condition and symptoms masked right sided carpal tunnel for years which is in a very different anatomical distribution than Petitioner's left sided carpal tunnel.

Dr. Chmell's causal connection opinion is similarly predicated on a single examination, limited medical records available for review, and incomplete, if not completely inaccurate, information about Petitioner's work activities and the mechanisms of injury. Based on all of the foregoing, the Arbitrator assigns little weight to the causal connection opinions of Dr. Williams and Dr. Chmell.

The Arbitrator does find Dr. Fernandez's opinion to be persuasive given the totality of this record. He is the only physician to review any job description or specific physical demand description of any of Petitioner's positions with Respondent. He is the only physician that viewed the performance of any of Petitioner's activities at work in a video, even if the activities were done at a slower pace or on fewer machines than Petitioner reports she worked. He is also the only physician to plausibly explain that the potential multifactorial causes of carpal tunnel syndrome do not automatically result in a causal connection opinion linking a patient's work activities and carpal tunnel syndrome; each factor much be considered in the full context of the patient's case including consideration of the specific work activities. For example, Dr. Fernandez plausibly explained that repetitive hand/wrist activities, the use of a vibratory air tool, or the use of any hand tool no matter how repetitively, would not in and of itself cause bilateral carpal tunnel syndrome; it would depend on the type of tool and the force associated with the use of the tool and the repetitive and *heavy* or *forceful* gripping/grasping/ tool use. Dr. Fernandez also admitted that while Petitioner's reported tasks were repetitious and had occurred over decades they were also relatively varied and none of the activities involved gripping or grasping with significant force, the use of heavy tools, or significant hyperextension or hyper flexion for prolonged periods of time.

Furthermore, Dr. Fernandez noted that carpal tunnel syndrome is most commonly seen in females in Petitioner's age group, that Petitioner was at additional risk given her increased body mass index, and that, while there was no doubt that Petitioner's symptoms may increase or worsen with exposure to work activities, her condition could also increase or worsen with exposure to *any* activities which did not warrant a finding of causal relationship or aggravation on that basis alone. Given the totality of the record, the Arbitrator finds that Dr. Fernandez's opinion is persuasive and assigns greater weight to the opinion of Dr. Fernandez in this case because his opinions are based on objective information and a more complete understanding of Petitioner's medical condition and work activities rather than speculation, inference, conjecture or, primarily, Petitioner's incomplete and unreliable reports.

Based on all of the foregoing, the Arbitrator finds that Petitioner failed to meet her burden of proof to establish a causal connection between her current bilateral carpal tunnel syndrome condition and either accident at work.

Lateral Epicondylitis

Petitioner contends that her left elbow condition is causally connected to one or both of her injuries at work. Petitioner did not testify about any mechanism of injury occurring on either date of accident that would plausibly give rise to her claimed current condition of ill being in the left elbow. Indeed, the record is devoid of any elbow complaints made by Petitioner until May 7, 2008, over 6½ years after her first accident and over 3½ years after her second accident. On this basis alone, the Arbitrator finds that no causal connection finding is reasonable given the enormous gap in time between Petitioner's accidents and any onset of left elbow symptomatology. The Arbitrator also notes that Petitioner was not working during much of this time frame.

Notwithstanding, Petitioner's own physician, Dr. Williams, essentially discounts any such causal connection finding. While he opined that Petitioner's lateral epicondylitis is causally related to her injuries at work, he could not identify when Petitioner's elbow symptoms began and he admitted that Petitioner's symptoms developed in middle age which would not be masked by her cervical condition because it was not located in the same anatomical distribution. Based on all of the foregoing, the Arbitrator finds that Petitioner has not established a causal connection between her claimed current left elbow condition of ill being and either work accident.

In support of the Arbitrator's decision relating to Issue (J), whether the medical services that were provided to Petitioner were reasonable and necessary, and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds the following:

Petitioner alleges entitlement to payment of $8,913.00 in outstanding medical bills from Dr. Stamelos only. AX1;AX2. The bills submitted from Dr. Stamelos reflect dates of service, but not the specific medical treatment underlying each bill. PX16. As causal connection has been resolved in Petitioner's favor with respect to her cervical spine and left arm radiculopathy condition only, the Arbitrator finds that any medical bills related to Petitioner's cervical spine and left arm radiculopathy condition are reasonable and necessary. The Arbitrator awards such bills. The Arbitrator further finds that any medical bills related to Petitioner's bilateral carpal tunnel syndrome or left lateral epicondylitis conditions are not reasonable or necessary and such bills are denied.

In support of the Arbitrator's decision relating to Issue (K), Petitioner's entitlement to TTD benefits, the Arbitrator finds the following:

There is no dispute regarding temporary total disability benefits in Case No. 02 WC 11336. The parties stipulated that Petitioner received full wages while she was off work until she returned to work on August 20, 2002. *See* AX2. Petitioner asserts that she is entitled to temporary total disability from July 24, 2004 through June 12, 2011. *Id.* Respondent disputes Petitioner's entitlement to temporary total disability benefits after May 5, 2009. *Id.* While parties are bound by their stipulations at trial, it appears from the evidence that the "5/5/09" end date listed in the Request for Hearing form is a typographical error. Respondent argues, and Respondent's Exhibit 12 reflects, that payments were made to Petitioner through March 5, 2009. The Arbitrator notes that March 5, 2009 was a Thursday. Mr. Belmonte's final vocational rehabilitation report is dated March 9, 2009, which the Arbitrator notes was a Monday. The Arbitrator finds that Petitioner is not entitled to temporary total disability or maintenance benefits after March 9, 2009.

To the extent that Petitioner's physicians and Respondent's independent medical examiners opine on the matter, they agree that Petitioner can work, but they disagree on the type of work that she can perform and to what degree. Much discussion is contained in the various physicians' depositions about whether Petitioner could work in a position where she types, but this is a red herring. There is no credible evidence in the record that

Petitioner was ever asked to look for a job through Vocamotive or at any time that required her to type repeatedly. In any event, given the findings and conclusions explained above on causal connection, the Arbitrator is persuaded by the opinions of Dr. Fernandez. He opined that Petitioner could work full duty without restriction and that she could keyboard and perform data entry. Moreover, as early as December 5, 2007 Petitioner failed to cooperate during a functional capacity evaluation when she refused to give the physical therapist historical information. On March 24, 2008 Respondent's Section 12 examiner, Dr. Levin, opined that Petitioner could work beyond a sedentary level as noted in the invalid functional capacity evaluation results. Ultimately, the Arbitrator finds Dr. Fernandez's opinion on Petitioner's ability to work persuasive given the totality of the record.

Next, the Arbitrator notes that Petitioner was not cooperative in vocational rehabilitation through a vocational rehabilitation counselor and that she did not engage in an adequate self-directed job search such that she is entitled to maintenance benefits (at the temporary total disability rate) pursuant to the Act. There is ample evidence of Petitioner's non-compliance with the vocational rehabilitation program at Vocamotive. Petitioner's reticence to look for any work is clear not only from Mr. Belmonte's records and deposition testimony, but also from Petitioner's own testimony and other record evidence.

Vocamotive's records and Mr. Belmonte's testimony about vocational rehabilitation efforts made between August 6, 2008 and March 9, 2009 reflect myriad conduct indicating Petitioner's non-compliance including Petitioner leaving before the end of a session, failure to attend sessions, failure to apply for job leads provided, failure to participate in recommended vocational rehabilitation activities, failure to complete some job logs, Petitioner's statements that she could not perform the recommended activities or obtain employment, and her selective cooperation in other recommended vocational rehabilitation activities at Vocamotive or on her own. The Arbitrator places greater weight on the opinions of Mr. Belmonte than those of Ms. Entenberg given the record in this case and finds that Petitioner was not compliant in vocational rehabilitation.

Finally, Petitioner testified that she has continued to look for work after March of 2009 on her own by either submitting applications in person or calling over the phone, that she applied for a part-time position in her neighborhood, and that she called a couple of prospective employers through newspaper ads. Petitioner did not provide any evidence of these or any other job searches performed after March 9, 2009. Thus, the Arbitrator finds that there is no credible evidence of a self-directed job search sufficient to entitle Petitioner to maintenance benefits after March 9, 2009.

Based on all of the foregoing, the Arbitrator finds that Petitioner is not entitled to any temporary total disability or maintenance benefits after March 9, 2009. The Arbitrator also finds that there is no evidence that Petitioner was paid maintenance benefits on Friday, March 6, 2009 or Monday, March 9, 2009. *See* RX12. Thus, the Arbitrator awards Petitioner these additional two days of maintenance benefits.

In support of the Arbitrator's decision relating to Issue (O), Petitioner's entitlement to prospective medical care, the Arbitrator finds the following:

As causal connection has been resolved against Petitioner with respect to her bilateral carpal tunnel syndrome or left lateral epicondylitis conditions, the Arbitrator denies the requested prospective medical care related thereto.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

VICKY PARAS,

Petitioner,

vs.

NO: 02 WC 11336

MOTOROLA, INC.,

14IWCC0099

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, occupational disease, causal connection, medical expenses, temporary total disability, and "causal as to the carpal tunnel," and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission notes that the Arbitrator's internet search was improper and beyond the evidence contained in the record. However, this error was harmless since this additional information was not necessary for the Arbitrator to reach the appropriate conclusions on the issues in this case.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 17, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired

without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 1 1 2014
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Michael P. Latz

Ruth W. White

DISSENTING OPINION

I respectfully dissent and find that the testimony of Petitioner was credible as were the causation opinions of Dr. Stamelos, Dr. Williams, and Dr. Chmell. Respondent's Section 12 Dr. Fernandez opined that Petitioner's job duties did not contribute to or aggravate her bilateral carpal tunnel syndrome (CTS) because he reviewed her job description and a video. However, his testimony does not seem to be based on the actual facts of this case. Petitioner's undisputed testimony was that the video was not representative of her work duties because it did not show "manual tune" or "repair." (T.24). "Manual tune" involved using small screwdrivers and required Petitioner to "turn [her] fingers all day long." (T.26). Petitioner testified that she spent 10 hours a day, 6 days a week doing that job and she noticed pain, numbness, and swelling in her hands while doing it. (T.21, 27). Petitioner also did other jobs including "laser trim," "pick and place," and "inspection and repair." (T.22).

Although the video shows the job of "laser trimming," Petitioner testified that she operated four machines at once while the video only showed workers doing one. (T.150). Petitioner testified that nobody else worked on four machines. (T.30). Petitioner testified that she also worked in the "receiver line," which is not shown on the video, and used a pneumatic screwdriver which involved applying 15 to 20 pounds of pressure. (T.67). Petitioner also testified that the video didn't show pliers being used to cut some of the circuit boards. The video only showed work on "the smallest boards." (T.149). When Petitioner was returned to work with light duty restrictions, she was put in "inspection" for only two weeks and then Respondent put her back in "manual tune." (T.39).

Petitioner credibly testified that her hands were hurting her and she had numbness in her fingers in 2001 but she thought it was related to her neck. (T.33). This is supported by the medical records and testimony of her treating physician, Dr. Stamelos, that Petitioner was

complaining of pain in her left hand and fingers along with numbness at that time. The first mention of right hand numbness and tingling was several months later on March 20, 2002, after Petitioner had been off work, and at a time when Dr. Stamelos noted that her neck and bilateral shoulder pain were getting better. This lends credibility to his testimony that Petitioner's complaints have been similar since the very beginning, including numbness and tingling in both hands (Px12 at 8) and that Petitioner has never stopped complaining about her hands (Id. at 13), but he was more focused on her cervical and shoulder problems because those were more serious (Id. at 42). He testified that Petitioner has double crush syndrome and that she is the "poster girl" for repetitive motion carpal tunnel disease. (Id. at 29). He is "positive" that Petitioner's work activities contributed to or caused her carpal tunnel. (Id. at 36).

Analyzing the testimony of Respondent's Dr. Fernandez in more detail, he testified that Petitioner's pain behavior was not significantly beyond her objective findings and that she does have a bad case of bilateral CTS with the right being much more severe than the left. (Rx7 at 12, 16). He did not believe that Petitioner's work duties, even if done for 27 years, would contribute to CTS and felt that her condition was "idiopathic." However, he did admit that her symptoms "manifested" while she did her job. (Id. at 20). Even though Petitioner's symptoms were worse when she was working, he did not believe that this meant there was a causal connection. On cross examination, he admitted that once someone has CTS, the symptoms can worsen over time even if they aren't working. He also admitted that if the job description and video were not all inclusive and she did, in fact, have to use vibratory tools, pinch/grasp, and press things into place, this would be important in his determination of causation. (Id. at 26). He opined that if Petitioner was exposed to heavy gripping, grasping, using tools on a repetitive basis, and certain vibratory tools, "of course those could be contributory factors considered causal to" CTS. (Id. at 29). He also opined that Petitioner absolutely needs surgery.

In my opinion, Dr. Fernandez's opinion is based on an incomplete understanding of Petitioner's job and should be discounted for that reason. Although the Arbitrator found the opinions of Petitioner's own doctors to be faulty for the same reason, she believed Dr. Fernandez because he viewed the video and reviewed the job description. However, as discussed above, this is immaterial when the video does not show all of Petitioner's job duties and particularly does not show the most strenuous ones.

In addition to Dr. Stamelos, Petitioner was examined by Dr. Williams who felt that there was a significant relationship between her work and her carpal tunnel syndrome. (Px13 at 13). Dr. Chmell also performed an examination and records review and agreed that there was a causal relationship. (Px14 at 17).

Based on the above and a review of the record as a whole, I would reverse the Arbitrator's decision on the issues of accident and causation and would find that Petitioner's bilateral CTS are causally related to the initial accident on October 10, 2001.

Charles J. DeVriendt

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

PARAS, VICKY
Employee/Petitioner

Case# **02WC011336**

04WC059273

14IWCC0099

MOTOROLA
Employer/Respondent

On 1/17/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0006 LEO ALT
221 N LASALLE ST
SUITE 2014
CHICAGO, IL 60601-1407

1120 BRADY CONNOLLY & MASUDA PC
BEVERLY N MASUDA
ONE N LASALLE ST SUITE 1000
CHICAGO, IL 60602

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

14IWCC0099

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Vicky Paras
Employee/Petitioner

v.

Motorola
Employer/Respondent

14IWCC0099

Case # 02 WC 11336

Consolidated cases: 04 WC 59273

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Robert G. Lammie**, Arbitrator of the Commission, in the city of **Chicago**, on **June 16, 2011** and the case was later re-assigned and proceedings were concluded by the Honorable **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Chicago**, on **June 12, 2012**, **July 24, 2012**, and **October 29, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **19(b), 8(a)**

ident, **October 10, 2001**, Respondent *was* operating under and subject to the provisions of

, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

ais date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident as explained *infra.*

In the year preceding the injury, Petitioner earned **$34,511.36**; the average weekly wage was **$663.68**.

On the date of accident, Petitioner was **47** years of age, ***married*** with **0** dependent children.

Respondent ***has*** paid all reasonable and necessary charges for all reasonable and necessary medical services as explained *infra.*

Respondent shall be given a credit of **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0**.

Respondent is entitled to a credit of **$0** under Section 8(j) of the Act.

ORDER

As explained in the Arbitration Decision Addendum, Petitioner established causal connection between her cervical spine and associated left arm radiculopathy condition and both accidents. Petitioner failed to establish causal connection between her bilateral carpal tunnel syndrome condition or left elbow lateral epicondylitis condition and either accident on October 10, 2001 or on September 23, 2004.

Medical benefits

As explained in the Arbitration Decision Addendum, causal connection has been resolved in Petitioner's favor with respect to her cervical spine and left arm radiculopathy condition only. Thus, the Arbitrator finds that any medical bills related to Petitioner's cervical spine and left arm radiculopathy condition are reasonable and necessary and such bills are awarded pursuant to Sections 8(a) and 8.2 of the Act. The Arbitrator further finds that any medical bills related to Petitioner's bilateral carpal tunnel syndrome or left lateral epicondylitis conditions are not reasonable or necessary and such bills are denied.

Prospective Medical Treatment

As explained in the Arbitration Decision Addendum, Petitioner failed to establish causal connection between her bilateral carpal tunnel syndrome condition and her accident on October 10, 2001 or on September 23, 2004. Thus, Petitioner's claim for prospective bilateral carpal tunnel surgeries and associated recuperative medical care is denied.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

January 16, 2013
Date

ICArbDec19(b) p. 3

JAN 17 2013

141WCC0099

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION *ADDENDUM*
19(b)

Vicky Paras
Employee/Petitioner

v.

Motorola
Employer/Respondent

14IWCC0099

Case # 02 WC 11336

Consolidated cases: 04 WC 59273

FINDINGS OF FACT

The parties participated in a consolidated hearing on June 16, 2011 before Arbitrator Lammie at which time all live testimonial evidence was presented pursuant to Petitioner's Section 19(b) and Section 8(a) motion. Subsequently, these matters were reassigned to the undersigned Arbitrator to conclude the presentation of evidence and render a decision on the issues presented. The Arbitrator finds on the issues presented at trial as stated herein.

Background

Vicky Paras ("Petitioner") testified that she emigrated from Greece in May of 1974 after completing the American equivalent of the first year of high school. June 16, 2011 Arbitration Hearing Transcript ("Tr. pp.") 11-12. Her primary language is Greek and she taught herself English. Tr. pp. 12-13. Petitioner is right-hand dominant. Petitioner's Exhibit ("PX") 5.

Petitioner was employed with Respondent since 1976 through her first date of accident[1]. Tr. pp. 10-12. Petitioner testified that her first job in the United States was with Respondent in Franklin Park[, Illinois] and that she worked with tiny crystals used in watches for a couple of years. Tr. pp. 12-14. Thereafter, Petitioner moved to Schaumburg[, Illinois] in 1978 and worked in parts and then in crystals. Tr. p. 14.

Petitioner testified that she never filed a workers' compensation claim prior to these claims, that she was never sick, and that she worked seven days a week. Tr. p. 15. She also testified that she was never treated for any neck, back, arm or hand condition prior to October of 2001, and that she never had occasion to go to Respondent's clinic or medical department. Tr. p. 15. Petitioner further testified that she did not know what carpal tunnel was prior to 2001 and that it was not until she came under the care of Dr. Stamelos that she understood that she might have carpal tunnel. Tr. p. 27.

On cross examination, Petitioner testified that she could not remember if she only claimed an injury to her left shoulder when she originally filed her workers' compensation claim in 2002, but also acknowledged that her original application for adjustment of claim filed by her prior attorney referred to an injury due to pushing and pulling, which resulted in injury to the left shoulder only. Tr. pp. 73-76; Respondent's Exhibit ("RX") 1. Petitioner's Amended Application for Adjustment of Claim dated March 16, 2004 reflects a pushing and pulling injury to the "left shoulder, neck, arms, hands, etc." RX2.

[1] While Petitioner testified that she worked through October of 1991, the Arbitrator notes that the undisputed date of accident is October 10, 2001. Arbitrator's Exhibit ("AX") 1.

Petitioner further testified on cross examination that her original application for adjustment of claim filed on March 16, 2004 by her prior attorney again referred to an injury sustained on October 10, 2001 due to pushing and pulling, resulting in injury to the left shoulder, neck, arms, and hands. Tr. pp. 115-116; RX2. On re-direct examination, Petitioner testified that her former attorneys filed an amended application on her behalf after she advised them of what her doctors had been telling her. Tr. pp. 140-142. Petitioner also testified that she did not remember exactly what she was doing on the date of injury; she was either in inspection or laser and she believed that she was in laser half of the day and elsewhere for the remainder of the day. Tr. p. 113. She further testified on re-direct examination that her pain was worse after her second injury in 2004 and that it was localized in the upper back, shoulder, and down to her hand. Tr. pp. 148-149.

The Arbitrator notes that no original or amended application for adjustment of claim in the Commission's files in both of Petitioner's cases reflect any injury sustained as a result of repetitive trauma.

Petitioner's Job Duties

Petitioner testified that she was originally assigned to "manual tune" and had been in that position for several years prior to 2001. Tr. pp. 17-21. This position was in the same department as "laser, pick and place, inspection and repair." Tr. p. 20. Petitioner estimated that she worked in manual tune 80% of the time, approximately 10 hours a day, 6 days a week. Tr. pp. 20-22. Petitioner testified that the majority of the remainder of her time was spent working as the "laser" person. Tr. pp. 22-23. Otherwise, Petitioner worked filling in other positions including "pick and place" and "inspection and repair." Tr. p. 23. On cross examination, Petitioner testified that prior to her injury in October of 2001 she also worked in an area called "manual kits." Tr. p. 76.

Petitioner testified that the "laser" position involved using another, more modern [computerized] machine; there she would move around a mouse with little buttons to make cuts into certain places on the board. Tr. pp. 27-28. While in this position, Petitioner testified that she noticed numbness, swelling, and that her hands were hurting. Tr. p. 27.

On cross examination, Petitioner testified that she would stand in front of a computer with a keyboard and tune small, thin circuit boards; to do this, she would take the circuit board out of one box, adjust the circuit board to match the [computer] screen, and then place the completed circuit board in another box. Tr. pp. 97-99. Petitioner testified that the circuit boards in the laser position are bigger than those in manual tune. Tr. pp. 100. She further testified that there are different lasering processes for different boards, but the four machines on which she worked were all the same. Tr. pp. 101-103.

Petitioner testified that she worked in laser approximately 8-10 hours per day, 4-5 days per week in 2002 and 2003. Tr. p. 106. Petitioner testified that Respondent's Exhibit 4 was not representative of what she did when she worked the laser position because it showed the employees operating less than four laser machines simultaneously like she did by going from one machine to another and "[j]umping like crazy, around." Tr. pp. 28-30, 150. Petitioner also testified that she only uses the mouse in this position. Tr. pp. 103-104.

Petitioner further testified that Respondent's Exhibit 4 did not show manual tune or repair or inspection. Tr. pp. 24-25, 137. Petitioner testified that manual tune involved using a small tool that was similar to a screwdriver on small circuit boards of differing sizes and that she would turn her fingers all day long around, forward, and backwards. Tr. pp. 26, 66, 104. Petitioner testified that she also worked with an air gun using 15-20 pounds of pressure to close transreceivers with the screws and later clarified that she did not use this tool while in manual

tune, but rather while she was in repairs. Tr. pp. 67-68, 105. Then she would input information into a computer that could either pass or reject the [circuit] board. Tr. p. 26.

Petitioner also worked in a quality control inspection job (a.k.a. FQA). Tr. pp. 107-108. Petitioner testified that she was seated in this position and that varying sizes and types of thin circuit board sheets would come down to her on a conveyor belt and she would use tools including a tweezers, brush, and pliers to inspect, clean, and place the circuit boards in a box. Tr. pp. 108-110. On re-direct examination Petitioner testified that the pliers she used were not reflected in Respondent's Exhibit 4 and that it only showed the smallest [circuit] boards. Tr. pp. 149-150.

Job Descriptions

Petitioner's line assembly operator job description in Respondent's microcircuits group dated September 22, 2004 reflects that an employee is rotated every two weeks. PX2. Some of the tasks that Petitioner performed required the following: (1) ability to assemble small components into ceramic substrates using tweezers (line assembly); (2) ability to sit and look at small parts under a microscope for eight hours a day (FQA); (3) ability to stand/sit for long periods of time (mostly sitting); and (4) ability to lift up to 15 pounds "(mostly related to fixtures - at the time [Petitioner] was working on Manual tuning and boards weighed about 1 to 2 pounds)[.]" *Id.* The time spent on each task depended on the job and was approximately 5 to 10 min. *Id.* The tools required to perform the job (both manual and power) included tweezers, a hand torque set 15 pounds, and tuning tools for the manual tuning position. *Id.* Petitioner was also required to be able to lift up to 15 pounds. *Id.* The Arbitrator notes that this job description appears to have been created in response to a request about Petitioner's specific job duties.

An internal job description analyzed as of December 28, 2005 and entitled "Physical Demand Documentation" delineates the functions and physical activities required by the FQA, pick and place, and laser trim positions. PX2; RX11. FQA is a quality assurance inspection position. *Id.* The purpose of the pick & place position is to place components on a circuit board. *Id.* The purpose of the laser position is to utilize a machine that automatically trims excess solder or other material from circuit boards. *Id.* All three positions have essential functions that include visual inspection, inspection with use of a powered microscope, utilizing tweezers/picks/fingers to place components onto circuit boards, and picking up trays of circuit boards (weighing approximately 5 to 8 pounds) to trim boards where the employee determines how many boards to place on the tray. *Id.* The physical requirements of the positions are as follows:

	Laser Trim	FQA	Pick & Place
Standing	Occasionally (30% or less of shift)	None	None
Sitting	Constantly (70% of shift)	Constantly (90% of shift)	Constantly (90% of shift)
Walking	Rarely (less than 5% of shift)	"	"
Lifting	Rarely (less than 5% of shift); lifts trays from rack that range in height from 42"-64" on rare basis & lifts trays of boards weighing 5-8 pounds as determined by the employee and how many boards the put on the tray	"	"
Carrying	Rarely (less than 5% of shift)	"	"
Pushing/	Rarely (less than 5% of shift);	"	"

pulling	pushes trays into fixtures with minimal force
Reaching	Infrequently (less than 10% of shift); transferring trays from the rack requires reaching down to 20" and up to 64"; placing boards in fixture requires reaching 15" from body at 42" height; activation button is 20" reach

Id. In addition, repetitive hand motions include bilateral simple grasping, firm grasping, and fine manipulation. *Id.* The use of picks and tweezers also requires fine manipulation as well as simple and firm grasping. *Id.* Holding trays and circuit boards requires grasping, but no repetitive fingering motions are required. *Id.*

October 10, 2001 Accident

Petitioner testified that on October 10, 2001, there were some people missing from the line. Tr. p. 16. Petitioner testified that she was assigned as the pick and place person, but since there was no one to pick up the heavy fixtures she pulled the fixtures from the bottom of the table and put them in a cart to carry them. Tr. p. 16; *see also* Tr. p. 80. Petitioner testified that the second time she pulled the fixtures to place them on the table she felt pain in her back "like I was stung with a hard pain[.]" Tr. pp. 16-17; *see also* Tr. pp. 139-140.

Petitioner further testified that one could either sit or stand depending on the size of the circuit boards and covers, some of which were big. Tr. pp. 81-82. Petitioner was unable to accurately describe the size or weight of these boards, but estimated that they were approximately 1' x 6" and approximately 1-1½" thick. Tr. pp. 82-84.

Petitioner testified that the circuit board would come to her on a conveyor belt and she would snap a part onto the circuit board. Tr. p. 83. She also testified that the circuit boards were copper on the bottom and green on the top, that the metal piece that she attached to the circuit board was the same size as the bottom of the circuit board, and that she would then place the circuit board back onto the conveyor belt to go forward on the line. Tr. pp. 85-86.

Petitioner testified she told her coworker about her injury and that her coworker told Petitioner's supervisor that her back was hurting. Tr. p. 17.

Respondent's Health Services Department & Alexian Brothers

Petitioner testified that she was referred to, and saw, the company nurse. Tr. pp. 17, 30-31. She also went to Respondent's clinic at Alexian Brothers a few times. Tr. pp. 30-31. The medical records reflect that Petitioner went to Alexian Brothers on October 15, 2001. PX4. At that time, Petitioner's restrictions included no lifting/carrying over 2 pounds with the left arm, limited pushing/pulling with the left arm, no limited strong grip/grasp/pinch with the left hand/arm, and no reaching/lifting above the left shoulder. PX4. Petitioner also saw a nurse at Respondent's Health Resources department on October 22, 2001, was sent to the clinic, and then returned to work with restrictions. PX1. Petitioner returned to the nurse on November 2, 2001 and was sent to the clinic at 8:15 a.m. PX1. The work restrictions ordered on October 22, 2001 and November 2, 2001 remained the same with the exception that Petitioner was further restricted from pushing/pulling over 5 pounds. PX4.

Stamelos Clinic

Petitioner testified that she then went to see Dr. Stamelos because he spoke Greek and that all of the treatment that she received from Dr. Stamelos in 2001 and 2002 was for her neck, hands, and arm; he was not treating her for any other purpose. Tr. pp. 31, 62, 88-89. At that time, Petitioner testified that she noticed numbness in her hand and fingers, especially on the left, and pain in her neck and hand. Tr. pp. 33. Petitioner also testified that she was laid off in 2001. Tr. pp. 31-32.

Petitioner testified that she continued to treat with Dr. Stamelos, and occasionally went to Respondent's medical department where they put ice on her shoulder and left hand. Tr. pp. 40-41.

Petitioner first saw Spiros Stamelos, M.D. ("Dr. Stamelos") on November 14, 2001. Tr. p. 88; PX5; PX12, p. 7. At that time, Petitioner reported an injury on October 10, 2001 "of the left shoulder because of repetitive usage. She works in the line resulting in over usage of the left arm." PX5; *see also* PX12, p. 8 (Dr. Stamelos testified that Petitioner attributed her injury primarily to repetitive hand work at Motorola). Petitioner reported that "[s]he was pushing and closing containers when she experienced [numbness, tingling, and pain radiating down to the first, second, and third digits of the left arm/hand] because of repetitive usage." PX5; *see also* PX12, pp. 42, 43-44. A handwritten history, presumably taken by Dr. Stamelos' staff, reflects that Petitioner "sts was pushing & clicking container in assembly line. Pt had repetitive assembly line motion which cause L shoulder pain." PX5.

Dr. Stamelos' records reflect only limited range of motion in the left shoulder and cervical spine, a very painful left shoulder, and paraspinal muscle spasms without any complaint of bilateral hand tingling, primarily on the left. *Id.* The medical records further reflect that Dr. Stamelos' note that Petitioner's x-rays showed a loss of lordosis in the spine. *Id.* Dr. Stamelos administered trigger point injections into the bilateral shoulders and cervical spine. PX5; PX12, p. 34. He ordered different prescription medications from the "inappropriate" ones prescribed at Alexian Brothers that gave Petitioner a rash. PX5. He ordered a left shoulder MRI, a cervical spine MRI, and an EMG/NCV of the left upper extremity "because of the radiation of the pain down the arm." PX5; *see also* Tr. pp. 34-35. Additionally, he ordered physical therapy because of Petitioner's radiating pain down into the left arm. PX5. Dr. Stamelos noted that "I do believe it is soft tissue in the form of impingement versus a rotator cuff injury and possible AC degeneration and possible labrum injuries." *Id.* Petitioner was placed off work by a chiropractor at the Stamelos clinic through November 28, 2001. PX5; *see also* PX12, p. 13.

On November 16, 2001, Petitioner reported diffuse neck pain, moderate pain radiating into the left shoulder, increased pain when lifting the left arm and bending the neck backwards, and headaches. PX5. Petitioner reported being pain free before and an onset of pain while she was working a repetitive job at Motorola on October 10, 2001, which she rated at a level of 7/10. *Id.* Dr. Stamelos noted that muscle relaxant and anti-inflammatories helped minimally as had a course of physical therapy, but that her pain had not improved significantly and that she had difficulty sleeping as well as performing tasks at home. *Id.* After an examination, Dr. Stamelos diagnosed Petitioner with chronic moderate cervical strain with associated mild myofascial pain syndrome and articular dysfunction of the C5-C6 and facet with left arm radiculopathy from suspected arthritic changes or the space occupying disc lesions at C4-C7 and cervicogenic tension headaches. *Id.* He ordered home exercises, a TENS unit for electrical stimulation, and chiropractic care. PX5; *see also* Tr. pp. 36-37. Petitioner returned to a chiropractor at Dr. Stamelos' clinic for continued chiropractic care and/or physical therapy throughout her treatment with Dr. Stamelos. PX5.

Petitioner underwent a cervical spine MRI on November 21, 2001. *Id.* At that time, Petitioner reported "left-sided neck pain radiating down the left arm since lifting and pulling injury at work October 10, 2001." *Id.* The interpreting radiologist noted a large left lateral herniated disc at C6-C7. *Id.* Petitioner underwent a left shoulder MRI on the same date and reported "[p]ain since lifting/pulling injury." *Id.* A different interpreting radiologist noted: (1) mild to moderate increased signal intensity involving the supraspinatus tendon anterodistally consistent with inflammation, degeneration, or contusion if trauma has occurred but no rotator cuff tear; (2) no labral-ligamentous complex tear; and (3) an approximately 1.4 x 1.0 cm circumscribed lesion involving the medial aspect of the humeral head most commonly representing a conjoined lesion/cortical chondroma. *Id.*

On November 28, 2001, Dr. Stamelos placed Petitioner off work through December 5, 2001 pending an orthopedic evaluation. PX5; *see also* Tr. pp. 89, 151-152.

On December 5, 2001, Petitioner returned to Dr. Stamelos complaining of left shoulder pain and neck pain causing headaches as well as numbness in the left hand in the second and third digits. PX5. No objective examination findings were noted at the time of this visit. *Id.*

On December 11, 2001, Petitioner underwent the recommended EMG/NCV to rule out left cervical radiculopathy versus a myofascial referral pattern. PX5. Specifically, Petitioner was being evaluated for her "complaints of neck pain and associated radiation of the pain with paresthesias into her left upper extremity since her work related pulling injury of October 10, 2001. She is referred to rule out a left cervical radiculopathy vs. a myofascial referral pattern." *Id.* The interpreting physician opined that Petitioner's study was abnormal, the EMG findings were consistent with left C7 radiculopathy, there was evidence of a mild-moderate median neuropathy at the left wrist, and evidence of the mild median sensory neuropathy at the right wrist. PX5; *see also* PX12, pp. 9-10.

On December 19, 2001, Dr. Stamelos reviewed Petitioner's MRI films and EMG/NCV test results and noted "[t]he impression" of left carpal tunnel syndrome, right carpal tunnel syndrome mild, and a herniated disc at C6-C7 on the left. PX5. At his deposition, Dr. Stamelos testified that Petitioner's C6-C7 nerve problem affected Petitioner's left upper extremity. PX12, pp. 10-11. Dr. Stamelos referred Petitioner for a neurology consult and ordered continued conservative management (i.e., chiropractic care). PX5. While he notes that he evaluated Petitioner in the office, no objective examination results are identified. *Id.* Petitioner was placed off work through January 16, 2002[2]. *Id.*

On January 28, 2002, Petitioner was placed off work because she was "100% disabled from work until further notice." *Id.*

First Section 12 Examination – Dr. Skaletsky

On February 5, 2002, Petitioner saw Gary Skaletsky, M.D. ("Dr. Skaletsky") at Respondent's request. Tr. pp. 77-78; RX9. Dr. Skaletsky examined Petitioner and took a history from her, reviewed various treating medical records, and rendered opinions regarding Petitioner's cervical spine. RX9.

[2] While the Stamelos clinic note reflects a January 16, 2001 date, the date of Petitioner's visit was December 19, 2001. PX5. The Arbitrator notes that Petitioner's next appointment was scheduled for, and Petitioner's off work status was effective through, January 16, 2002.

Regarding the mechanism of injury, Petitioner reported that on October 10, 2001 she "was performing a function that she says required her to exert significant downward pressure with both upper extremities onto a metal part. This was done repetitively as the parts came past her on a conveyor belt. The purpose of this function was to snap or fit the metal part onto another piece of equipment. In doing so, she felt the immediate onset of pain in her neck radiating to the left upper extremity." *Id.* Petitioner also reported continuing work with increased symptomatology and numbness and weakness of the left upper extremity. *Id.*

Petitioner testified that she did not recall describing a job to Dr. Skaletsky where she worked on a conveyor belt snapping or fitting metal parts into another piece of equipment, but soon thereafter testified that this is what she did on "[t]hat day that I was hurting. That was the job I was hurting." Tr. pp. 78-79. Petitioner testified that this is the pick and place job. Tr. p. 79.

On examination, Dr. Skaletsky noted that Petitioner was uncomfortable, tilted her head toward the right, and held her left upper extremity flexed at the elbow and close to the body. PX9. Petitioner's neck had limited range of motion particularly in extension and turning to the right as well as tenderness and spasm to palpation of the left cervical, trapezius, and scapular muscles. *Id.* Petitioner's deep tendon reflexes were symmetrical and equal with no Babinski's signs or pathologic reflexes. *Id.* Petitioner's gait and station were normal although she kept her left arm relatively close to her body while walking, her strength was decreased rather diffusely in the left upper extremity which Dr. Skaletsky believed to be secondary to pain rather than true weakness, Petitioner's Romberg test was negative, and there was no sign of atrophy or fasciculation. *Id.* Petitioner's sensory examination was decreased on the outer aspect of the left upper extremity down to the level of the second and third fingers of the left hand. *Id.*

Ultimately, Dr. Skaletsky diagnosed Petitioner with a herniated nucleus pulposus on the left at C6-C7 with left cervical radiculopathy. *Id.* He recommended an anterior C6-C7 discectomy with interbody fusion and opined that Petitioner would reach maximum medical improvement 12 weeks postoperatively. *Id.* Dr. Skaletsky also noted his concern about causal connection. *Id.* Specifically, he noted the discrepancy between Petitioner's report of the mechanism of injury on the date of his examination and an October 15, 2001 note indicating that Petitioner was applying gentle pressure with her thumbs at the time of injury. *Id.* He also noted his review of a line assembly operator job description indicating the need to lift up to 15 pounds, use tweezers, and a hand torque set to 15 pounds. *Id.* Dr. Skaletsky further noted that if Petitioner was performing the latter job there was no causal connection between her injury and the diagnosis, whereas his opinion might change if she was performing a different job with different requirements at the time of injury. *Id.*

Continued Medical Treatment

On February 20, 2002, Dr. Stamelos noted Petitioner's "history of neck and *bilateral shoulder injuries*, work related, on 10/10/01." PX5 (*emphasis added*). However, Petitioner only reported neck and left shoulder, arm and/or hand symptoms during chiropractic care prior to February 20, 2002. *Id.* Petitioner did not report any traumatic injury to or symptomatology in the right shoulder, arm, or hand. *Id.* Petitioner complained of "[pain] in the neck and shoulders [that] continues" at a chiropractic visit on February 25, 2002. *Id.* On cross examination, Petitioner denied complaining only about neck pain and not pain in the hands. Tr. p. 120. Dr. Stamelos diagnosed Petitioner with a cervical strain, whiplash and radiculitis of the cervical spine. PX5. While he notes that he evaluated Petitioner in the office, no objective examination results are identified. *Id.* He ordered continued conservative treatment and kept Petitioner off work. *Id.*

Petitioner sought treatment with Wesley Yapor, M.D. ("Dr. Yapor") on March 5, 2002. PX5; *see also* Tr. p. 89. At that time, she reported "that she was perfectly healthy and fine up until November of 2001." PX5. Petitioner

reported that she was working for Respondent where she "was working pain forth at a rather unusual high effort." *Id.* She further reported that "she began experiencing pain in the left upper extremity shortly thereafter.... [and] pain and increasing discomfort, especially in the index and middle finger of the left upper extremity...." *Id.* Dr. Yapor advised Petitioner that surgery was the most definitive way to treat her left upper extremity, but Petitioner reported that she had just started cervical traction which she wanted to continue and he advised that she should do so and return to him after traction was completed. PX5; *see also* Tr. p. 89. Petitioner testified that she refused the recommended surgery because she was afraid. Tr. pp. 89-90.

On March 20, 2002, Petitioner reported improved "neck pain and bilateral shoulder pain" and "numbness and tingling in the bilateral hands, left hand worse than right." PX5. Dr. Stamelos diagnosed Petitioner with cervical degenerative disk disease and a herniated disk at C5-C6. *Id.* While he notes that he evaluated Petitioner in the office, no objective examination results are identified. *Id.* Dr. Stamelos also noted that "[e]ssentially, there is no change in the patient's condition." *Id.* He ordered continued conservative treatment for "cervical disc herniation with radiculopathy on the left at C6-7" and kept Petitioner off work. *Id.*

On May 20, 2002, Petitioner reported "neck pain, left shoulder pain, left wrist pain and right wrist numbness." PX5. While Dr. Stamelos noted that he evaluated Petitioner in the office, no objective examination results are identified. PX5. Dr. Stamelos changed Petitioner's diagnoses to chronic pain syndrome, carpel tunnel syndrome, left shoulder pain and cervical spine pain, but again noted that "[e]ssentially, there is no change in the patient's condition." PX5. He ordered continued conservative treatment, noted that "wrist surgery for carpal tunnel release will be considered in the future[,]" and kept Petitioner off work. PX5; *see also* Tr. pp. 36-37, 90 and PX12, pp. 13-14.

On June 12, 2002, Petitioner reported "neck pain, left shoulder pain and bilateral wrist numbness and pain." PX5. While Dr. Stamelos noted that he evaluated Petitioner in the office, no objective examination results are identified. *Id.* Dr. Stamelos changed Petitioner's diagnoses to chronic pain and disability, bilateral wrist numbness, and left shoulder pain, but again noted that "[e]ssentially, there is no change in the patient's condition." *Id.* He ordered continued conservative treatment "secondary to chronic pain[,]" and kept Petitioner off work. *Id.*

On August 7, 2002, Petitioner reported "neck pain." *Id.* While Dr. Stamelos noted that he evaluated Petitioner in the office, no objective examination results are identified. *Id.* Dr. Stamelos changed Petitioner's diagnoses to "[c]ontinued cervical syndrome, chronic pain." *Id.* He again noted that "[e]ssentially, there is no change in the patient's condition." *Id.* He also noted that Petitioner was "awaiting for a return to work versus surgical intervention[, and that Petitioner] states that the medications are not helping her." *Id.* Dr. Stamelos kept Petitioner off work and scheduled a return visit in one week. *Id.*

On August 19, 2002, Petitioner reported "neck pain and numbness to the bilateral hands, right side worse then [sic] the left." *Id.* While Dr. Stamelos noted that he evaluated Petitioner in the office, no objective examination results are identified, however he now noted that Petitioner's "condition" was improving. *Id.* He diagnosed Petitioner with cervical syndrome, ordered continued conservative treatment. *Id.* The work note, however, reflects that Petitioner's diagnoses are "cervical strain, radiculitis[.]" *Id.* Dr. Stamelos returned Petitioner to light duty work with a 5-pound lifting restriction beginning August 20, 2002. PX5; PX12, pp. 15, 45-46; *see also* Tr. pp. 89, 90-93, 151-153 (Petitioner testified that she was off work through this date per Dr. Stamelos' orders, but later testified that she could not recall if she was paid during this period of time or how long she was off work after Dr. Stamelos placed her off work).

At trial, Petitioner testified that she returned to work for Respondent in a light duty position in inspection for approximately two weeks as prescribed by Dr. Stamelos. Tr. pp. 37-38. The inspection position was easy and, while she used her hands, Petitioner testified that she did not lift or turn anything using her wrists. Tr. pp. 38-39. Then Petitioner testified that she was placed back in the laser and manual tune positions. Tr. pp. 39. At this time, Petitioner testified that she noticed that she got tired easily, her back was killing her, her shoulder was killing her, and her hand was killing her. Tr. pp. 39-40. On cross examination, Petitioner denied that Respondent accommodated her restrictions and testified that after one week she was "put on the line again" in her manual tune position. Tr. pp. 93-95.

On October 2, 2002, Petitioner returned to Dr. Stamelos and reported "bilateral hand pain and numbness, right side worse then [sic] the left[, and…] neck pain." PX5; PX12, p. 49. Petitioner also reported that she was working light duty. PX5. While Dr. Stamelos noted that he evaluated Petitioner in the office, no objective examination results are identified. *Id.* Dr. Stamelos changed Petitioner's diagnoses to "[c]ontinued bilateral hand pain, carpal tunnel syndrome and cervical syndrome." *Id.* The work note, however, reflects that Petitioner's diagnoses are "cervical strain, radiculitis[.]" *Id.* He ordered physical therapy with a chiropractor "on an as needed basis[,]" and increased Petitioner's work restrictions to include sedentary work only and no lifting/pushing over 2 pounds. *Id.* The work note reflects that Petitioner was restricted from lifting/carrying over 5 pounds, pushing or lifting at all, and that she was to "continue" light sedentary work. *Id.* The prior work note, however, does not mention sedentary work. *Id.*

Petitioner did not seek medical treatment again for nine months until July 2, 2003. PX5; PX12, p. 16. On this date, Petitioner reported a work related injury on October 10, 2001 "when she was pushing some fixtures into a box resulting in pain in her neck." PX5. Dr. Stamelos noted Petitioner's visit with Dr. Yapor [presumably from March 5, 2001] "where the cervical syndrome was diagnosed not to mention the carpal tunnels and bilateral hand pain." *Id.* He also noted that Petitioner continued to have pain but was avoiding surgery or invasive treatment hoping that it would get better spontaneously, and that she continued to see Dr. Sotos [from his clinic] for noninvasive chiropractic care. *Id.* At his deposition, Dr. Stamelos testified that Petitioner had not yet had surgery and she wanted to continue with therapy and chiropractic treatment. PX12, p. 17.

Regarding her symptoms, Petitioner reported that she "still has neck pain, low-back pain and bilateral wrist pain and numbness." PX5. Dr. Stamelos does not identify any objective examination at the time of this visit. *Id.* Dr. Stamelos noted that Petitioner had been diagnosed with cervical syndrome, herniated discs in the neck, and chronic pain, but she had not responded well to conservative management. *Id.* He further noted that Petitioner would begin treatment at the clinic on a regular basis and that she was "going to probably end up having a carpel tunnel release as a starter since she is not improving all of this time." *Id.* He determined that Petitioner's large C6-C7 herniated disc of the left was causing radicular symptoms and her feeling of ill being. *Id.* He ordered continued restricted duty work and for her to return to the clinic "prn." *Id.* No objective examination findings were noted at the time of this visit. *Id.*

Petitioner did not seek medical treatment again for another eight months until February 25, 2004. PX5; PX12, pp. 17-18. On this date, Dr. Stamelos authored a narrative letter at Petitioner's request noting that she was "presently working in a light duty capacity" and that her restrictions were permanent. PX5; PX12 pp. 50-51. At his deposition, Dr. Stamelos testified that he "would just rather write it and get her off my back than argue with her." PX12, pp. 50-51. In his report, Dr. Stamelos stated that Petitioner was injured at work on October 10, 2001 "secondary to pushing a lot of weight resulting in a strain and injury to her cervical spine and shoulder. This resulted in severe neck pain, left shoulder pain, and left arm pain." PX5; *see also* PX12, pp. 17-18. He opined that Petitioner sustained a permanent injury in the neck and upper girdle that "necessitate either surgical indications at C5-C6 and C6-C7 or for her to modify her workload to accommodate the condition." PX5; *see*

also Tr. pp. 36-37. He noted that Petitioner had "opted for a modification of her work style and to work within her limitations." PX5. He recommended an evaluation and permanent work restrictions along with a permanent position that would accommodate herniated discs in her neck and left radiculopathy. *Id.*

At his deposition, Dr. Stamelos testified that he did not refer to Petitioner's carpal tunnel syndrome because he had to address Petitioner's neck first, which was the "central problem." PX12, pp. 52-53. He further testified that Petitioner injured herself secondary to pushing a lot of weight. PX12, p. 51. Dr. Stamelos qualified his response about the mechanism of Petitioner's injury by stating "[w]ell, that's what she said in Greek, maybe I misinterpreted. What she meant was repetitive motion. There is no Greek word for repetitive motion. Pushing a lot of weight or doing a lot of work, work with her hands of course." PX12, p. 51. He added, "I think there is weight involved, but I think she meant just an awful lot of work went through her hands, that would be a good way to describe it. [.... And, there] was lifting in her job. She said she had to lift some boxes after she filled them, but she said most of her work was doing repetitive motion. And somebody, I think, I don't remember, somebody I think it was this doctor who saw her, said she did like 3,000 maneuvers a day or something[, which was Petitioner's estimate to that doctor and probably to him as well.]" PX12, pp. 51-52.

On March 31, 2004, Petitioner returned reporting ongoing neck pain that was worse over the posterior aspect. PX5. Petitioner did not report pain in either arm or hand. PX5. Dr. Stamelos noted that Petitioner had a repetitive usage injury from Motorola that had been contested and that "[f]or some reason, they do not want her to have the surgery." *Id.* He ordered medications, injections therapy, diagnosed her with cervical syndrome related to her injury on October 10, 2001, and instructed her to return on an as needed basis. *Id.* No objective examination findings were noted at the time of this visit other than Dr. Stamelos' handwritten diagnosis of "cervical syndrome." *Id.*

Approximately three months later, on June 30, 2004, Petitioner returned to Dr. Stamelos. *Id.* He noted that she had carpal tunnel syndrome and needed surgery, low back pain, and cervical spine syndrome due to herniated discs at C5-C7 "all from an injury on October 10, 2001 at Motorola." *Id.* No objective examination findings were noted at the time of this visit other than Dr. Stamelos' handwritten diagnoses of "LBP/C-spine/HND [illegible]." *Id.*

September 23, 2004 Accident & Continued Medical Treatment

Petitioner testified that she was lifting boxes on September 23, 2004 and hurt herself and felt a sharp pain, again. Tr. p. 41. She returned to Dr. Stamelos on September 27, 2004 who placed her off work. Tr. pp. 41-42, 119-120. Petitioner testified that she did not receive workers' compensation benefits or temporary total disability benefits from September 24, 2004 through February 27, 2007. Tr. pp. 42-43.

Dr. Stamelos' records contain two different progress notes dated September 27, 2004. PX5. The first such note reflects Dr. Stamelos' notation that Petitioner returned after sustaining "a repetitive motion injury while working in the assembly line and pushing fixtures." *Id.* He noted that Petitioner developed radiculopathy which turned out to be herniated discs at C5-C6 and C6-C7, and despite conservative treatment, Petitioner's condition had worsened. *Id.* He ordered a physical therapy and surgical evaluation for the cervical spine by Dr. Alburno and further diagnostic testing, prescribed pain medication including Vicodin, ordered physical therapy, and placed Petitioner off work until further notice "[d]ue to excessive pain[.]" *Id.* No objective examination findings were noted at the time of this visit other than Dr. Stamelos' handwritten diagnoses of "cervical syndrome/HND C5 C6 C6 C7[.]" *Id.* Petitioner testified that on cross examination that she did not recall being referred by Dr. Stamelos to Dr. Alburno or being treated by him. Tr. p. 120. Dr. Stamelos' assessment was that Petitioner had

cervical syndrome with herniations from C5-C7 and radiation to the left from the shoulder down to the mid-upper arm. PX5. He noted that conservative management had failed. *Id.*

The second note dated September 27, 2004 reflects Dr. Stamelos' notation that Petitioner returned after an injury at work on September 23, 2004 with "quite significant" pain complaints of neck stiffness, pain, and radiculopathy "that has occurred since the time of the injury while working at Motorola. The radiculopathy and the pain were so severe that she had to get an emergency appointment to see me where I will try to treat her for these new symptoms that she has developed." *Id.* Dr. Stamelos noted that Petitioner had "some kind of history of neck problems in the past[, however], she has had no symptoms for a long time, and it seems to be a new occurrence based on the patient's history and the patient's presentation." *Id.*

On October 13, 2004, Petitioner returned to Dr. Stamelos and reported considering discoplasty with Dr. Alburno. *Id.* While Dr. Stamelos noted that he evaluated Petitioner in the office, no objective examination[3] results are identified other than Dr. Stamelos' handwritten diagnosis of "cervical syndrome considering discoplasty [with] Dr. Alburno." *Id.* Dr. Stamelos diagnosed Petitioner with cervical syndrome, ordered a continuation of the "current course of management," and instructed Petitioner to return as needed. *Id.*

At his deposition, Dr. Stamelos testified on cross examination that Petitioner had no hand complaints on September 27, 2004 through November 17, 2004. PX12, pp. 54-55. He further testified that he did not treat Petitioner for carpal tunnel syndrome from the second half of 2004 through 2007, but he qualified his response by stating that he treated Petitioner for the more important cervical injury. PX12, pp. 55-56.

October 14, 2004 Incident Report

An Occupational Health Resources Injury and Illness Incident Report ("incident report") completed by Petitioner on October 14, 2004 reflects that when she returned to work after her 2001 injury she worked on the laser machines. Tr. pp. 116-119; PX3; RX3. Petitioner reported that after she returned to work from her 2001 injury she was placed to work on 4 laser machines despite having restrictions. PX3. The Arbitrator notes that the incident report originally reflected three laser machines but that was written over with the number four. *Id.* Petitioner further stated that she complained to Frank as of April 1, 2004 that he needed to move her. *Id.* According to the incident report, Frank asked Petitioner for other paperwork which she provided from her Dr. and he moved her, "but the damage was done and I was visiting the nurses offices for [illegible] often and he was complaining because I was going to the nurse for [illegible] something to relieve my pain so on Sept 23 I visit the office and told them I was going to the doctor after the nurses (Marylyn [illegible]) advised to visit my doctor[.]" *Id.*

On re-direct examination Petitioner testified that she completed the incident report after she was injured the second time noting that Frank, her supervisor, had given her regular work which was contrary to her doctor's restrictions. Tr. pp. 142-143. On re-cross examination, Petitioner testified that Frank put her back to her original position in manual tune. Tr. pp. 156-157.

The incident report reflects that the body parts affected included only the upper back and left arm. Tr. pp. 116-119; PX3; RX3. Petitioner testified that she gave this report to the nurse. Tr. p. 156. Upon questioning as to

[3] The Arbitrator notes that Dr. Stamelos' records contain a note from October reflecting that Petitioner was diagnosed with cervical disc herniation and that an examination was performed, however the day and year of the exam is unidentifiable and the signature appears to be by someone with the first name initial "K," which the Arbitrator infers is not Dr. Stamelos. PX5.

the exclusion of any reference in the incident report of injury of her hands, Petitioner testified that her English was not very good. Tr. pp. 118-119.

Continued Medical Treatment

Petitioner underwent another cervical spine MRI on October 6, 2004 as indicated by a history of "pain." PX5. On October 27, 2004, Petitioner began physical therapy at the Stamelos clinic for her neck pain. *Id.*

On November 17, 2004, Petitioner returned with a "cervical problem" including effacement and the disc herniation at C5-C6 with spurring resulting in cord compression and chronic cervical radiculopathy and cervical syndrome." *Id.* Dr. Stamelos noted that Petitioner was still considering discoplasty and that she was awaiting approval for the surgery. *Id.* Petitioner was to return to him as needed. *Id.*

Approximately four months later, on March 23, 2005, Petitioner returned to Dr. Stamelos and reported that she was not working. *Id.* Dr. Stamelos noted that Petitioner had cervical syndrome and a herniated nucleus pulposus. *Id.* While Dr. Stamelos noted that he evaluated Petitioner in the office, no objective examination results are identified. *Id.* He ordered that Petitioner continue "with the current course of management" and scheduled a follow up in four weeks. *Id.*

On June 15, 2005, Petitioner returned to Dr. Stamelos, who noted that Petitioner suffered from cervical spine syndrome and that she needed physical therapy, which was being denied. *Id.* He also noted that Petitioner had low back pain, and that Petitioner could not work at that time. *Id.*

On September 26, 2005, Dr. Stamelos noted that Petitioner had cervical spine syndrome and that she needed nucleoplasty surgery. *Id.* While Dr. Stamelos noted that he evaluated Petitioner in the office, no objective examination results are identified. *Id.* He referred Petitioner to Dr. Elborno for an evaluation and to schedule surgery at which he wanted to be present. *Id.* No objective examination findings were noted at the time of this visit. *Id.*

Second Section 12 Examination – Dr. Levin

On October 10, 2005, Petitioner underwent a second section 12 evaluation of the neck with Mark Levin, M.D. ("Dr. Levin"). Tr. pp. 120-121; RX10. Dr. Levin examined Petitioner and took a history from her, reviewed various treating medical records, and rendered opinions regarding Petitioner's cervical spine. RX10.

Petitioner gave Dr. Levin a history of her condition. *Id.* She reported working as a full-time cell phone assembler for Respondent for 27 years. *Id.* In 2001, she reported that she was lifting 50 lbs. every twenty minutes and began having neck pain. *Id.* Petitioner treated with Dr. Stamelos, underwent therapy and injections, and that it was recommended that she undergo a cervical fusion, but she was scared and did not undergo the surgery. *Id.* She also reported a temporary improvement while being off work for 6-7 months. *Id.* Petitioner opted to undergo continued therapy and pain management and she worked light duty until April of 2004 when she was returned to full duty work. *Id.* Again, Petitioner reported that in her full duty position she had to lift up to 50 pounds, but she did not specify how often she did so. *Id.* She also reported that after two months of full duty work she started having increased neck pain, saw the company nurse, and underwent some occupational therapy. *Id.* "By September 23, 2004 her neck pain gradually increased and she started getting numbness and tingling down her fingers, more on the left than the right." *Id.* Petitioner was placed off work and underwent some trigger point injections with Dr. Stamelos, who referred her to another doctor for surgery,

which she reported she was then ready to accept. *Id.* Finally, Petitioner reported developing pressure headaches. *Id.*

At the time of her examination, Petitioner complained of neck pain at a level of 7-8/10 with a sharp, constant burning sensation. *Id.* Petitioner reported pain greater on the left then on the right with pain radiating down her arms and "she feels like she drops items." *Id.* Petitioner reported headaches with weather changes, worsening neck pain when turning her neck to the right, minimal driving, and feeling "like she has lost the ability to move her arms behind her back." *Id.*

On examination of the neck, Petitioner complained of tenderness to palpation over the left cervical paraspinal muscles going into the left trapezius, no pain over the right cervical paraspinal muscles or the right trapezius, and pain over the medial border of the left scapula with slight tenderness over the medial border of the right scapula. *Id.* Petitioner had some slight discomfort to palpation over the thoracic spine us processes. *Id.* She was able to forward flex and touch her chin to within 1 inch of her chest and extend back to neutral. *Id.* Her right deviation was 45° and left deviation was 70°. *Id.* On examination of the upper extremities, Petitioner had tenderness over the right and left AC joint and left AC joint and diffuse discomfort over the entire left clavicle and to palpation of the left arm. *Id.* Petitioner's active range of motion in the shoulders was 170° bilaterally on forward flexion, 170° on right abduction, 160° on left abduction, internal rotation on the right to T5 and on the left to T10. *Id.* Petitioner's external rotation was 90° bilaterally and rotator cuff strength was 5/5 bilaterally. *Id.*

Dr. Levin diagnosed Petitioner with cervical spondylosis with secondary neck discomfort and loss of range of motion. *Id.* He noted that Petitioner did not give any one alleged work injury that was causing her discomfort but stated that this gradually became worse on September 23, 2004 causing her to be off work. *Id.* Dr. Levin noted that he did not have Petitioner's actual job description at the time of his report and that he had not reviewed actual films of certain diagnostic studies. *Id.*

Ultimately, Dr. Levin opined that Petitioner had no specific accident occurring on September 23, 2004 and noted that Petitioner described that it was increased work activities beginning in April of 2004 that made her symptoms worse. *Id.* Dr. Levin disagreed with the recommended discoplasty from pain management. *Id.* He noted that the procedure was not the standard of care currently used in orthopedics and that he would not recommend the procedure for Petitioner. *Id.*

Continued Medical Treatment

On November 30, 2005, Petitioner returned to Dr. Stamelos. PX5. At this visit, Dr. Stamelos noted that Petitioner "was inappropriate" at her last visit and that she needed a psychiatric referral to treat her for depression. *Id.* The Arbitrator notes that no such inappropriate behavior was noted in Dr. Stamelos' September 26, 2005 progress note. *Id.* Dr. Stamelos also referred to Petitioner's October 10, 2001 injury and Petitioner's reluctance to have surgery which she now wanted to undergo but had no financial means by which to do so. *Id.* He further noted that Petitioner had recently been evaluated by Dr. Mark Levin of Barrington Orthopedics who felt that she needed her workup and possibly surgery. *Id.* Petitioner reported being in pain and requested injection therapy, which he noted was indicative of a lot of pain because Petitioner was needle phobic. *Id.* The Arbitrator notes that no such phobia was mentioned on November 14, 2001 when Dr. Stamelos first provided injection therapy to Petitioner, or at any time thereafter until this date. *Id.* Dr. Stamelos diagnosed Petitioner with cervical disc syndrome and left radiculopathy with her hand being very weak and painful. *Id.* No objective examination findings were noted at the time of this visit. *Id.*

On July 31, 2006, Petitioner testified that she came under the care of Dr. Bauer as approved by Respondent. Tr. pp. 43-44, 121. Petitioner lists her occupation as laser operator in the new patient information form of the same date. PX6.

Petitioner saw Jerry Bauer, M.D. ("Dr. Bauer") and reported that she was a former machine operator for Respondent with recurrent lifting of 15 pounds. PX6. Dr. Bauer noted Petitioner's history that in 2001 "she was lifting boxes with heavy plates inside and she injured her left arm." *Id.* Petitioner reported problems in her left shoulder, radicular pain and numbness in her left arm, headaches, neck pain, and persistence of symptoms such that she had not worked since 2004. *Id.* Dr. Bauer also noted Petitioner's report of "left sided neck pain with radicular pain radiating down her left arm, hand and fingers with a burning sensation. Driving results in some numbness in her hands and she has to switch hands. Her hands also tend to fall asleep at night." *Id.*

On examination, Dr. Bauer noted that Petitioner had limited range of motion in the neck, tenderness along the left trapezius muscle, and a slightly reduced left triceps reflex and mild weakness of her finger extensors on the left. *Id.* Petitioner had reasonably good strength in both her arms and legs, positive bilateral Tinel's and Phalen's signs, and a positive Hoffman's and Trömner's sign on the right only. *Id.* Dr. Bauer's impression was that Petitioner had a "long history of persistent radicular pain in her left arm. She probably also has carpal tunnel syndrome." *Id.* He recommended repeat MRI of the cervical spine and a repeat EMG study to assess the degree of her radiculopathy and carpal tunnel syndrome. PX6; *see also* Tr. pp. 44-45. He also recommended cervical spine x-rays and a CT scan. PX6.

Petitioner underwent an MRI on August 31, 2006, which showed a small left foraminal disc herniation at the C6-C7 level that would be expected to result in a left C7 radiculopathy and very small midline disc herniations at the C3-C4 and C5-C6 levels. *Id.* A September 18, 2006 MRI showed mild degenerative changes of the lower cervical spine, but was otherwise unremarkable. *Id.*

Petitioner underwent a repeat EMG/NCV on September 8, 2006 that showed very severe right carpal tunnel syndrome on the right and mild left carpal tunnel syndrome. *Id.*

On September 20 and 21, 2006, Petitioner sought treatment with Dr. Bauer. *Id.* Dr. Bauer noted Petitioner's cervical MRI which revealed a small central disc herniation at C5-C6, and a herniated disc on the left at C7[4]. *Id.* Dr. Bauer noted that Petitioner's herniated disc on the left would account for her radiating left arm pain. *Id.* He further noted that Petitioner's EMG revealed bilateral carpal tunnel worse on the right than on the left and that Petitioner was symptomatic from the carpal tunnel syndrome. *Id.* Petitioner wanted to undergo carpal tunnel surgery first and Dr. Bauer referred Petitioner to Dr. Craig Williams. *Id*; *see also* Tr. pp. 121-122.

On October 5, 2006, Dr. Bauer noted that Petitioner called and indicated that she wanted to have her carpal tunnel surgery prior to having neck surgery. PX6. On cross examination, Petitioner denied telling Dr. Williams that she wanted surgery on her hands. Tr. pp. 121-122. She further testified that she did not see Dr. Williams until approximately 2 years later in May of 2008. Tr. p. 122.

[4] The Arbitrator notes that the interpreting radiologist noted that Petitioner also had a small central disc herniation at C3-C4 and that the herniated disc on the left was at C6-C7. PX5.

Third Section 12 Examination & Dr. Fernandez Deposition

On October 17, 2006, Petitioner underwent a third section 12 evaluation by John Fernandez, M.D. ("Dr. Fernandez"). Tr. p. 123; RX8. Dr. Fernandez submitted to a deposition on July 30, 2010. RX7. He is a board-certified surgeon in orthopedics, microsurgery, and hand surgery. *Id*, pp. 5-6.

Dr. Fernandez examined Petitioner and took a history from her. RX8; RX7, pp. 8-12. He did not examine Petitioner's neck or cervical spine. RX7, p. 25. Dr. Fernandez also reviewed certain treating medical records and diagnostic tests, a video depicting the activities of the FQA, pick and place, and laser trim positions, a job analysis entitled physical demand documentation. RX8; RX7, pp. 13-16; *see also* PX2. He rendered opinions regarding Petitioner's carpal tunnel syndrome. *Id.*

On cross examination, Dr. Fernandez testified that Petitioner's description of her job duties correlated with his review of the job video and physical demand analysis and that the accuracy of any job description given to him regardless of the source is important in forming his opinions. RX7, pp. 25-27. He further testified that the simple use of a vibratory air tool would not subject a person to developing carpal tunnel alone; it would depend on the type of tool and the force associated with the use of the tool. RX7, pp. 27-28. Additionally, Dr. Fernandez testified on cross examination that if Petitioner was hypothetically "exposed to heavy gripping, grasping, using tools on a repetitive basis, certain types of vibratory tools as you pointed out, of course those could be contributory factors considered causal to the carpal tunnel syndrome." RX7, pp. 28-29.

At the time of her examination, Petitioner reported that she began to notice discomfort in her hands in 2002. RX8; RX7, p. 8. She also reported neck and shoulder pain, but that her "major" complaints involved numbness and tingling primarily affecting the median nerve distribution right much greater than left. RX8 (quotations in original); RX7, pp. 8-9. The symptoms worsened at night and with activities including driving, and Petitioner reported that her pain and symptoms were at a level of 10/10. RX8; RX7, pp. 8-9. Dr. Fernandez noted that Petitioner was tearful during portions of her examination while speaking about her symptoms and that she did not seem to exhibit symptoms magnification or pain beyond her objective findings. RX8; RX7, p. 12. Petitioner did not report any elbow complaints. RX7, p. 10.

Dr. Fernandez testified that Petitioner related her complaints to her work activities and stated that her 2001 injury occurred at work and she was using her hand tuning tools all day long. *Id.*

Dr. Fernandez diagnosed Petitioner with bilateral wrist carpal tunnel syndrome, right greater than left. RX8. He opined that there was no causal relationship between her work and the development of her carpal tunnel syndrome even though she did the work for 27 years. RX8; RX7, pp. 16-17. He noted that Petitioner's tasks were repetitious, but they were also relatively varied with reference to what she did. RX8. Additionally, he noted that none of the activities involved significant gripping or grasping with significant force, the use of heavy tools, or significant hyperextension or hyper flexion for prolonged periods of time. *Id.* Dr. Fernandez further noted that carpal tunnel syndrome is a multifactorial disorder most commonly seen in females in Petitioner's age group, and that there was an additional risk from Petitioner's increased body mass index/weight. RX8; RX7, pp. 18, 20-21, 35. Finally, Dr. Fernandez noted that there was no doubt that Petitioner's symptoms may increase or worsen with exposure to any activities, including work activities, but that did not warrant a finding of causal relationship or aggravation effect from her work activities. RX8. He opined that Petitioner could work full duty without restriction, that she could keyboard and perform data entry, and that she was at maximum medical improvement unless she decided to proceed with further treatment. *Id.*

At his deposition, Dr. Fernandez testified that carpal tunnel syndrome was caused by excessive pressure on the nerve at the wrist which could be caused by many things including direct trauma although the vast majority of cases were idiopathic "meeting that there is no known single cause. It is multifactorial...." RX7, pp. 17-18. Certain job activities could aggravate or contribute to carpal tunnel syndrome including significantly repetitive activities requiring heavy forceful gripping and hyperflexion or hyperextension. RX7, pp. 18-19. In Petitioner's case, Dr. Fernandez testified that while Petitioner related her symptoms to her job activities because she would get symptoms with job activities the symptoms were a manifestation of her [pre-existing] condition. RX7, pp. 19-20. Dr. Fernandez also testified that there has never really been a proven association between repetitive activities such as keyboarding or data entry without associated force. RX7, pp. 19, 21. On cross examination, Dr. Fernandez testified that a person's genetic predisposition to developing carpal tunnel syndrome coupled with exposure to job activities that everyone agreed could cause carpal tunnel syndrome was insufficient to relate a carpal tunnel diagnosis with the job. RX7, pp. 30-31.

Regarding other factors unrelated to work activities, Dr. Fernandez testified that while carpal tunnel syndrome could progress on its own over time, if Petitioner's job was causing or contributing to her carpal tunnel syndrome then he would expect that Petitioner symptoms would have improved and not worsened while she was off work. RX7, pp. 21-23. On cross examination, Dr. Fernandez acknowledged that carpal tunnel syndrome could progress or deteriorate with or without work activities. RX7, pp. 24-25.

Continued Medical Treatment

On October 29, 2006, Petitioner returned to Dr. Stamelos who noted in a narrative letter that she was a patient "who experienced significant injury to both her wrists and to her cervical spine because of the strenuous work she was involved in working for Motorola." PX5. He noted that it was "well known that her job requires her to be repetitively lifting and grabbing that would be the job description of items in mechanical objects that Motorola builds[,]" that Petitioner was a long time employee of Respondent's and that she had been in good health until recently. *Id.* He also noted that "[d]uring the period of 10/10/01 to 09/23/04, she worked with pain and in September 2004, she was taken off work by me with a letter of medical necessity." *Id.*

Dr. Stamelos opined that Petitioner had known herniations of the cervical spine that were "aggravated by repetitive lifting bending and twisting[,]" that she undoubtedly needed future treatment and surgery, and that while Petitioner was "very appropriate" and her condition was "very subtle" it was also "very serious" because it would ultimately lead to problems in turning her neck and functioning. *Id.* In conclusion, Dr. Stamelos noted that he would "try to become familiar with the case and the terminology and be more than happy to assist [Petitioner's counsel] with deposition because of complexities and difficulties in this type of case, which I believe is a work related repetitive motion injury." *Id.*

On November 9, 2006, Petitioner was cleared for surgery by her insurance company and indicated to Dr. Bauer her wish to proceed with surgery. PX6.

On December 15, 2006, Petitioner returned to Dr. Bauer but was unable to proceed with surgery due to antibiotic treatment for a tooth and gum infection. *Id.* Dr. Bauer noted that Petitioner had persistent burning in pain in the left arm which had been refractory to conservative therapy for a long period of time. *Id.* He also noted that Petitioner had paresthesias in her hand which was related in part to her cervical herniated disc as well as her carpal tunnel syndrome. *Id.*

On February 27, 2007, Petitioner underwent surgery with Dr. Bauer at Advocate Lutheran General Hospital for cervical radiculopathy. PX7; PX6; *see also* Tr. pp. 44-45, 123. Specifically, Petitioner underwent an anterior

cervical discectomy at C5-C6 and C6-C7 with microscope assisted visualization and an anterior cervical interbody fusion at C5-C6 and C6-C7 with placement of hardware including a plate and screws. PX7.

Petitioner testified that she remained under the care of Dr. Bauer after the surgery and began receiving temporary total disability benefits. Tr. p. 46.

The medical records reflect Petitioner saw Dr. Bauer postoperatively. PX6. On February 27 and March 7, 2007, Petitioner underwent x-rays that showed good alignment of the cervical spine and hardware. *Id.* Petitioner also returned to Dr. Bauer postoperatively on April 11, 2007, at which time her x-rays continued to show good alignment. *Id.* He ordered physical therapy for the neck and placed Petitioner off work. *Id.*

On May 9, 2007, Petitioner saw Dr. Stamelos who diagnosed her with depression, referred her to a psychiatrist, and noted that she should return on an as needed basis. PX5.

Petitioner began postoperative physical therapy on May 16, 2007 at Athletico. *Id.*

On May 23, 2007, Petitioner returned to Dr. Bauer, underwent x-rays, and reported residual pain in the left arm which was much improved. PX6. He noted that Petitioner had a normal neurological exam, her wound looked fine, her bone graft, plate, and screws were all in good position, that she had good strength, sensation, and reflexes, and that she reported improved pain as compared to pre-surgical pain. *Id.* He ordered continued physical therapy, prescribed medication, ordered wrist splints, and scheduled a return visit in two months with a repeat x-ray at that time. *Id.*

On July 11, 2007, Dr. Bauer noted that Petitioner's x-rays revealed good positioning of the bone graft, plate, and screws. *Id.* On examination, he noted that Petitioner's wound looked fine, deep tendon reflexes were symmetrical, and that she still had some dysesthesias [pathology] in her left arm. *Id.* Petitioner reported that her neck pain worsened while she was in physical therapy and that she was unhappy with her physical therapy site, therefore she was switched to another one. *Id.* Dr. Bauer kept Petitioner off work in her former position, which he noted was not then available, and scheduled a follow up with x-rays in three months. *Id.*

Petitioner testified that she went to Greece at the end of July of 2007 through August until she returned the first week of September of 2007. Tr. pp. 47, 51. She testified that the purpose of her visit was to see her mother who was sick and to bring her back to the United States. Tr. pp. 47-49; *see also* PX6 (10/31/2007 Dr. Bauer note). Petitioner testified that she did not receive approximately eight weeks of temporary total disability benefits and that her benefits resumed at some point. Tr. pp. 49-53.

On October 31, 2007, Petitioner reported some stiffness down the back of her neck and occasional discomfort in the left arm. PX6. On examination, Dr. Bauer noted that Petitioner's wound looked fine, her deep tendon reflexes and sensation were intact, and she still had some paresthesias in her hands with a positive Tinel's sign which he believed were related to bilateral carpal tunnel syndrome. *Id.* Petitioner testified that Dr. Bauer discharged her from his care and referred her to Dr. Williams. Tr. pp. 54, 124. Indeed, regarding her neck, Dr. Bauer noted that Petitioner reached maximum medical improvement. PX6. He also referred Petitioner to Dr. Williams for carpal tunnel surgery evaluation. PX6; *see also* Tr. p. 54.

In response to correspondence from Petitioner's counsel, Dr. Bauer rendered a report dated November 14, 2007 stating that regardless of whether Petitioner attended her physical therapy she was not able to return to work in August 2007. PX6. In a separate note also dated November 14, 2007, Dr. Bauer noted his placement of Petitioner at maximum medical improvement and stated that if the insurance company wanted specific

restrictions regarding a return to work then Petitioner would need to undergo a functional capacity evaluation. *Id.*

On November 21, 2007, Dr. Bauer referred Petitioner for a functional capacity evaluation. Tr. p. 123.

On December 5, 2007, Petitioner underwent the recommended functional capacity evaluation ("FCE"). Tr. p. 124; PX5; PX6. Petitioner appeared 45 minutes late and reported that she had a work related injury to her neck on September 23, 2004, but "**refused to give the therapist any additional history.**" PX6 (**emphasis in original**). The FCE was invalid due to submaximal effort. *Id.* Petitioner failed 20 of 23 objective validity criteria and the results of the FCE did "not represent a true and accurate representation of [Petitioner's] overall physical capabilities and tolerances at this time." *Id.* The FCE evaluator found that Petitioner was capable of functioning at a higher category of work than the minimal level of sedentary work, which was indicative of 2-hand occasional lift/carry of four pounds from floor-to-waist level, exhibited as a result of the invalid test. *Id.* Petitioner was listed as employable. *Id.*

Psychiatric Treatment

On May 22, 2007[5], Petitioner saw Dale John Giolas, M.D. ("Dr. Giolas"), a psychiatrist, for an initial evaluation based on Dr. Stamelos' referral. PX5. At that time, he noted Petitioner's symptomatology in response to various stressors including "surgical, pain, unemployment" resulting from a work injury and he diagnosed Petitioner with major depressive disorder, single episode, severe without psychotic features. *Id.* Petitioner returned on July 5, 2007[6] and Dr. Giolas maintained his prior diagnosis. *Id.* He recommended a follow up in two months presumably after Petitioner returned from seeing "M" in Greece. *Id.* Petitioner returned to Dr. Giolas on October 4, 2007 and February 6, 2008. *Id.* At the latter visit, Petitioner reported more depression and was "tearful as she is dealing with mother dying of pancreatic Ca at home." *Id.*

Continued Medical Treatment & SSD Benefits

Petitioner testified that she applied for Social Security disability benefits on November 14, 2006 and was eventually approved on September 4, 2008. Tr. pp. 69-70; *see also* PX5 (2/4/08 Stamelos note).

On January 14, 2008, Dr. Bauer noted his review of Petitioner's FCE that was "inconclusive" and stated that he would, thus, be unable to provide reasonable activity level recommendations and possible restrictions for Petitioner. PX6.

On February 4, 2008, Petitioner returned to Dr. Stamelos who noted that she was status post fusion with residual problems, had chronic pain, carpal tunnel syndrome, depression, and residual radiculopathy, and was trying for disability. PX5. No objective examination findings were noted at the time of this visit. *Id.*

She returned three days later on February 7, 2008. *Id.* Dr. Stamelos reiterated that Petitioner was status post cervical fusion and discectomy, that she had been diagnosed with carpal tunnel syndrome and depression, and that she had residual radiculopathy and pain from her cervical spine with chronic pain. *Id.* He opined that Petitioner was "fully disabled for any kind of work since we have the implications of injury, surgery, and some shortcomings." *Id.* He noted Petitioner's age of 53, slight obesity, and difficulty using upper extremities, and

[5] There are two different notes dated May 22, 2007, one of which appears to be incomplete. PX5.
[6] There are two different notes dated July 5, 2007, one of which appears to be incomplete. PX5.

essentially opined that she was fully disabled requiring SSI disability benefits. *Id.* No objective examination findings were noted at the time of this visit. *Id.*

Petitioner was scheduled to see Dr. Bauer again on February 27, 2008, but she did not attend the appointment. PX6. Then, on March 18, 2008, Dr. Bauer responded to correspondence from Petitioner's counsel and advised that he was unable to provide any medical update since he had not seen Petitioner in over four months. *Id.*

Fourth Section 12 Examination

On March 24, 2008, Petitioner saw Dr. Levin a second time at Respondent's request. *See also* Tr. p. 124; RX10. Dr. Levin re-examined Petitioner and took a history from her, reviewed various treating medical records, and rendered opinions regarding Petitioner's cervical spine. RX10. At the time of her examination, Petitioner reported being unemployed since her termination by Respondent in September of 2006, undergoing physical therapy after her surgery through October of 2007, and some continued burning in the left arm and forearm which was constant but varied. *Id.*

On examination, Petitioner was able to forward flex to touch her chin to within 3 inches of her chest and extent back 10°, she had right deviation to 25° and left deviation to 30°, she was tender to palpation over the medial border of the left scapula with minimal tenderness over the right medial border of the scapula, and she had no cervical or thoracic spasm. *Id.* Petitioner's upper extremities revealed no pain to palpation over the AC or SC joints, active shoulder range of motion on forward flexion to 170° on the right and to 90° on the left, passive range of motion to 110° with pain, and abduction on the right to 140° and on the left to 90° with pain. *Id.* Internal rotation on the right was to L1 and to the lumbosacral junction on the left, external rotation was 90° bilaterally, and rotator cuff strength was 5/5 on the right and 5-/5 on the left. *Id.* Petitioner had a negative impingement sign on the right and positive impingement sign on the left which she reported was present for the prior three months. *Id.* She also had a positive Tinel's sign on the left and a negative Tinel sign on the right with normal wrist motion bilaterally. *Id.* Biceps reflexes were normal bilaterally and Petitioner had a negative Phalen's sign. *Id.* Pinprick sensation was decreased over the left arm but otherwise normal. *Id.*

Dr. Levin diagnosed Petitioner as being status post cervical discectomy and fusion at C5/6 and C6/7, and found that she was at maximum medical improvement. *Id.* He also noted that Petitioner had a new onset of some change in her shoulder range of motion which did not appear to be related to her work activities dating back to September of 2004. *Id.* Regarding her ability to work, Dr. Levin noted that Petitioner's functional capacity evaluation was invalid and that Petitioner was capable of doing more than sedentary work, however, based strictly on Petitioner's physical examination, he would restrict Petitioner from work above shoulder level due to the new onset of decreased shoulder range of motion and pain. *Id.*

Continued Medical Treatment

On April 16, 2008, Dr. Stamelos noted that Petitioner was status post cervical fusion, she had disc disease, depression, pain, and carpal tunnel syndrome although [surgery for] that had not yet been approved. PX5. He also stated that she had a "double crush injury," that she worked for Zenith Assembly with repetitive usage of her hand, and that she wanted to have surgery as soon as possible with workers' compensation insurance approval or through alternative insurance. *Id.*

At his deposition, Dr. Stamelos testified on cross examination that Petitioner's carpal tunnel syndrome was related to Petitioner's first accident despite the fact that she had not been treated for it for four years. PX12, p. 57. He testified that the fact that Petitioner had been off work for four years after September of 2004 did not

affect her carpal tunnel syndrome because it never goes away. PX12, pp. 57-58. He also testified that although Petitioner's carpal tunnel syndrome worsened while she was not working, that was due to the normal aging process and Petitioner's hormonal changes. PX12, pp. 57-58. Dr. Stamelos further testified this is why he believed Petitioner wanted "to have it fixed now, but [she didn't] want to pay for it, [she wanted] to get some compensation or something." PX12, p. 58.

Dr. Stamelos referred Petitioner to John Sarantopoulos, D.O. ("Dr. Sarantopoulos") for evaluation of a physical therapy rehabilitation potential status post fusion. PX5; PX8. No objective examination findings were noted at the time of this visit. PX5.

Dr. Williams – Second Opinion and Deposition[7]

On May 7, 2008, Petitioner saw Craig Williams, M.D. ("Dr. Williams") one time per Dr. Bauer's referral for complaints of bilateral hand numbness, worse on the right, tingling and left elbow pain. PX6; PX9; PX13. Petitioner reported being more symptomatic on the right side, experiencing constant numbness bilaterally, worse on the right, and burning dorsal forearm pain on the left. PX9; PX13, pp. 6-10. Among other examination findings, Dr. Williams noted normal bilateral wrist range of motion, tenderness over the left lateral epicondyle and radial tunnel, pain with resisted wrist extension that reproduced forearm burning and pain, and positive Tinel's, Phalen's, and Durkan signs bilaterally. *Id.* At his deposition, Dr. Williams testified that he did not see any evidence of thenar muscle wasting on either side and that if Petitioner told him when her elbow symptoms started, he did not record that in his records. PX13, pp. 9, 44. Dr. Williams' impression was that Petitioner had bilateral carpal tunnel syndrome and evidence of left lateral epicondylitis. PX9; PX13, p. 11. He recommended surgical intervention for the carpal tunnel syndrome and beginning with conservative treatment for the lateral epicondylitis. *Id.*

Dr. Williams submitted to a deposition on May 18, 2009. PX13. He is a board-certified orthopedic surgeon with a subspecialty in hand surgery. *Id*, p. 5.

Dr. Williams testified that he only saw Petitioner on one occasion, May 7, 2008. PX13, p. 5. He authored a report of the same date and a second narrative report, dated September 15, 2008 at Petitioner's counsel's request. PX13, p. 12. He reviewed various records prior to rendering his reports including the following: (1) Petitioner's December 11, 2001 EMG report; (2) Dr. Stamelos' treating record from May of 2002; (3) a letter between Dr. Bauer and Dr. Stamelos from October of 2007; (4) Petitioner's September 8, 2006 EMG; and (5) some of Petitioner's vocational information from Petitioner's counsel. PX13, pp. 26-28.

In response to a lengthy hypothetical question posed by Petitioner's counsel, Dr. Williams testified that Petitioner's carpal tunnel syndrome was related to her work activities based on his "experience with patients with similar activities and similar conditions, as well as [his] knowledge of the anatomy, pathophysiology of the hand." PX13, pp. 14-19. He also testified that a double crush syndrome refers to a neurologic condition in which there may be a compressive neuropathy of a nerve at two levels. PX13, p. 19.

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[7] The Arbitrator notes that Respondent's counsel objected to certain opinions rendered by Dr. Williams at his May 18, 2009 deposition pursuant to *Ghere* because his narrative reports did not encompass all of the issues raised during the deposition and, presumably, those extraneous opinions caught Respondent by surprise at the time of the deposition. PX13, pp. 20; *see also Ghere v. Industrial Comm.*, 278 Ill. App. 3d 840, 663 N.E.2d 1046 (4th Dist. 1996). By the date of hearing, however, and in light of *City of Chicago v. IWCC* and noting the Appellate Court's more recent reiteration of a *Ghere* objection analysis in *Mulligan v. IWCC*, the Arbitrator overrules Respondent's objections. *City of Chicago*, 387 Ill. App. 3d 276, 899 N.E.2d 1247 (1st Dist. 2009); *Mulligan*, 408 Ill. App. 3d 205, 946 N.E.2d 421 (1st Dist. 2011).

Ultimately, Dr. Williams opined that there was a "significant relationship between [Petitioner's] current diagnosis of the carpal tunnel syndrome and the work activities that she had performed at Motorola as described in the letter that [Petitioner's counsel] provided to [him] on July 31st, 2008." PX13, pp. 13-14. On cross examination he clarified that Petitioner's work activities contributed to, but did not cause, Petitioner's carpal tunnel syndrome. PX13, p. 32. Dr. Williams understood Petitioner's job to be in "manual tune" and to require "extensive use of small screwdrivers to screw or tighten components or manipulate components that she estimated was 3,000 times a day; that it required twisting and turning of her wrist, as well as the use of air vibrating tools..." and the use of a "tweezers-type tool" and "some portion of pulling and snapping items together and in place and then filling them in boxes that weighed up to about 50 pounds." PX13, pp. 14, 16.

On cross examination, Dr. Williams testified that carpal tunnel syndrome can have various causes and that the causes are multifactorial. PX13, pp. 31-32. In Petitioner's case, he opined that Petitioner's job duties contributed to her carpal tunnel syndrome and he noted a combination of contributing factors including the repetitious nature of Petitioner's activities as he understood them, the inflammation/thickening of the flexor tendons encroaching upon the carpal tunnel space, the "suggestion and evidence that the use of vibratory tools can also contribute" to carpal tunnel syndrome, and because continuous gripping, grasping, pinching, fine motor activity and forceful activities on a repetitive basis can contribute to carpal tunnel syndrome. PX13, pp. 32, 34-36. However, Dr. Williams acknowledged that he had no specific information about the vibratory air tool used by Petitioner, how she used the tool, or with which hand or both she used the air tool. PX13, pp. 28-29. With regard to the use of vibratory tools, Dr. Williams acknowledged that use alone was insufficient to contribute to carpal tunnel syndrome development and it depended on degree, exposure, and so forth. PX13, p. 35. Similarly, he testified that the use of vibratory tools, gripping, and grasping should be continuous or a significant component of the work activities. *Id.* Dr. Williams also acknowledged that he did not view any video depicting Petitioner's job duties and his assumption that Petitioner's position was full time based on the "report" that Petitioner performed "3,000 repetitions a day." PX13, p. 29.

Regarding factors unrelated to work activities, Dr. Williams acknowledged that there is an increased incidence of carpal tunnel syndrome in older persons, in postmenopausal women, and in heavier persons as a secondary mechanism influencing the carpal tunnel. PX13, pp. 37-38. He also explained that while Petitioner's carpal tunnel symptoms were reportedly worse on the left in 2001, her December of 2001 EMG showed that she was electrophysiologically slightly worse on the right. PX13, pp. 39-40; *but see* PX5 (EMG findings showed evidence of a mild-moderate median neuropathy at the left wrist and evidence of the mild median sensory neuropathy at the right wrist).

Dr. Williams was unable to explain whether that symptomatology stemmed from Petitioner's carpal tunnel syndrome or cervical condition or both, but he suspected that some of the left-sided hand symptoms stemmed from Petitioner's cervical condition that were relieved after her cervical surgery which then "unmasked" the right-sided carpal tunnel syndrome. PX13, p. 40. To explain why Petitioner's right-sided symptoms increased despite the fact that Petitioner had not worked since 2004, Dr. Williams testified that once a person has chronic flexor tendon thickening daily use would continue to irritate the condition and Petitioner's symptoms probably would have been worse had she continued to work. PX13, pp. 40-41.

Dr. Williams also testified that continuous or prolonged keyboarding activities "that are not in, you know, modest and intermittent levels can exacerbate your symptoms much the way that other things that I asked her about here, talking on the phone, sleeping... driving your car, blow drying your hair, all those things can exacerbate your symptoms." PX13, pp. 41-43. He suggested keyboarding should only be done in small bits and in moderation if necessary. PX13, p. 43.

Regarding lateral epicondylitis, Dr. Williams testified that symptoms developed particularly in middle age as was Petitioner at the time of her examination and that this pain would not be masked by a cervical condition because it is not in the same anatomical distribution. PX13, pp. 44-47. Finally, Dr. Williams testified that Petitioner was capable of some work activity in May of 2008. PX13, p. 45.

Continued Medical Treatment

Petitioner underwent the recommended physical therapy evaluation on May 23, 2008. PX6; PX8. Dr. Sarantopoulos recommended that Petitioner undergo updated cervical spine imaging, updated EMG/NCV of the upper extremities for cervical radiculopathy and upper extremity referral entrapment neuropathy, physical therapy to address cervical symptomatology, trigger point injections for treatment of myofascial pain, additional medication for pain control, and, if her symptoms did not improve, cervical epidural injections. *Id.* It was noted that Petitioner was unfit to work as an assembly line worker secondary to her current symptoms and medication necessity that caused drowsiness. *Id.*

Petitioner testified that her temporary total disability benefits stopped in 2008 and her last check was February 6, 2008 until her benefits resumed June 23, 2008 when she went to a vocational rehabilitation assessment at Respondent's request. Tr. pp. 154, 57.

Dr. Chmell – Independent Medical Examination & Deposition[8]

On June 14, 2008, Petitioner underwent an independent medical evaluation at her attorney's request with Samuel Chmell, M.D. ("Dr. Chmell"). PX10; Tr. p. 62. Dr. Chmell submitted to a deposition on July 9, 2009. PX14. He is a board-certified orthopedic surgeon. *Id*, pp. 4-5, 24.

Dr. Chmell reviewed various medical records provided to him prior to rendering his opinions including the following: (1) a November 21, 2001 Arlington Heights MRI report; (2) Dr. Sarantopoulos' December 11, 2001 report; (3) an October 6, 2004 Neuro Open MRI report; (4) an Advanced Radiology Professionals report dated August 31, 2006; (5) a Professional Neurological report dated September 16, 2004; (6) Dr. Bauer's February 27, 2007 surgical report; and (7) Advocate Lutheran General hospital's records regarding Petitioner's surgery. PX14, pp. 7, 25-26. Dr. Chmell did not have any of Petitioner's medical records from 2001 and he reviewed a summary of records from Petitioner's counsel's office for treatment from November 14, 2001 through February 7, 2008. PX10; PX14, pp. 7, 27.

Petitioner reported that her job regularly and repeatedly required her to use her hands manipulating fine tuners and that she performed repeated lifting and pulling of boxes and steel fixtures. PX10. She also reported that she had been "performing repetitive motion activities with her hands and wrists for 27 years, but even more significantly, for the last seven years she has been working on a line assembly for transceivers doing pretty much the same thing on a daily, weekly, monthly and yearly basis. She state[d] that she use[d] the same tweezers and screwdrivers to perform the same assembly functions on a Motorola transceiver." *Id.* Further, Petitioner reported that she was unable to perform her regular job and that while her physicians recommended a job with restrictions and limitations it had not been provided to her by Respondent. *Id.*

Regarding her injury in October of 2001, Petitioner reported that "she was repeatedly lifting and pulling 50-pound boxes of steel fixtures. She developed left shoulder and arm pain. The shoulder and arm pain worsened

[8] Respondent's counsel also made *Ghere* objections to certain opinions rendered by Dr. Chmell at his deposition. PX14, pp. 12-13. The Arbitrator overrules Respondent's objections. *See* Footnote Number 9.

and radiated up into her neck. She then developed pain and swelling in her hands and wrists which became associated with numbness and tingling." *Id.* Regarding her injury in September of 2004, Petitioner reported that she "sustained an injury to her cervical spine with lifting and straining. She developed a severe sharp pain at the base of her neck on the left side and this pain persisted and worsened. The pain radiated all the way down her left arm and became constant, severe, shooting, and burning in nature. She could not move her neck or her arm." *Id.*

On examination of the cervical spine, Petitioner had moderate reduction of the normal cervical lordosis, muscle spasm and tenderness of the cervical paraspinal muscles left side more prominent, a healed but slightly reddened and hypertrophic surgical scar, positive Spurling's test on the left, and diminished range of motion. *Id.* On examination of the hands, Petitioner had slight diffuse swelling of both hands/wrists, full range of motion in both elbows and forearms and the right shoulder, and diminished range of motion in the left shoulder. *Id.* Both wrists demonstrated tenderness at the area of the carpal tunnel. *Id.* Petitioner had a positive median nerve compression test in both wrists and mild thenar atrophy on the right only as well as a positive Tinel's sign along the median nerve in both wrists and a positive Phalen's sign on the right at 15 seconds and 25 seconds on the left. *Id.* At his deposition, Dr. Chmell acknowledged on cross examination that Petitioner did not complain about either of her elbows during his examination and that he made no findings regarding Petitioner's elbows. PX14, p. 27. He also testified that Petitioner had no thenar atrophy on the left. *Id.*

Dr. Chmell diagnosed Petitioner with the following: (1) traumatic aggravation of cervical degenerative disc disease; (2) cervical disc herniations at C5-6 and C6-7 status post surgery; (3) bilateral carpal tunnel syndrome; (4) bilateral double-pinch syndrome secondary to the first three diagnoses; and (5) and rotator cuff tendinosis left shoulder. *Id.*

Regarding her cervical spine, Dr. Chmell opined that Petitioner sustained a cervical spine injury on both dates of accident which required surgery, that her medical and surgical treatment was reasonable and necessary, and that Petitioner had passed the point of maximum medical improvement. PX10; PX14, pp. 8-10. Regarding her bilateral carpal tunnel syndrome and tendinitis of the left shoulder, Dr. Chmell opined that they were causally related to Petitioner's long-term repetitive motion trauma at work to the upper extremities. *Id.* He also opined that both work accidents "likely contributed causally to the bilateral carpal tunnel syndrome and the left shoulder tendinosis[,]" and that Petitioner had double-pinch syndrome where the nerve lesion in her cervical spine likely further aggravated Petitioner's median nerve problem at the carpal tunnel. *Id.* Ultimately, Dr. Chmell testified at his deposition that Petitioner's bilateral carpal tunnel syndrome was caused by both her cervical injury and her repetitive work activity. PX14, p. 29.

At his deposition, Dr. Chmell testified that Petitioner's left-sided symptoms from her double-pinch syndrome in the neck and left arm were so overwhelming that Petitioner's right-sided hand symptoms did not become prominent until after her neck surgery, which alleviated the left-sided symptoms. PX14, pp. 10-13. He further testified that Petitioner's bilateral hand symptoms would not have necessarily improved when she was inactive after her cervical surgery because her bilateral hand condition was permanent and sometimes there is no explanation why such a condition does or does not improve with inactivity. PX14, pp. 17-18. The Arbitrator notes that Dr. Chmell did not provide these explanations about Petitioner's cervical spine condition masking her hand or bilateral hand symptomatology in his report.

In his report, Dr. Chmell also recommended bilateral carpal tunnel release followed by a course of therapy on each side and reassessment thereafter for the degree of permanent partial impairment. PX10. Otherwise without surgery he opined that Petitioner was at maximum medical improvement. *Id.* At his deposition and in response to a lengthy hypothetical question posed by Petitioner's counsel, Dr. Chmell testified that Petitioner's

bilateral carpal tunnel syndrome was related to her work activities because, in general, "...repetitive motion trauma can cause carpal tunnel syndrome, first of all. And I believe that [Petitioner] was subjected to repetitive motion trauma in her job to the extent that, in her, it did cause it. And I have seen other people to where it's caused it in the same fashion." PX14, pp. 13-17.

Dr. Chmell also opined at his deposition about the propriety of Petitioner's vocational re-training to perform computer keyboarding. PX14, pp. 20-21. He testified that such training would not be appropriate because it was usually repetitive in nature and caused the same sorts of problems that Petitioner had experienced with her hands and wrists. *Id.* He further testified that Petitioner was not employable because of her hands and that appropriate jobs are not readily available for undereducated people where at least considerable usage of the hands is involved. *Id.* If Petitioner had the recommended carpal tunnel repair, however, he opined that Petitioner may or may not thereafter be employable. PX14, pp. 22, 30. The Arbitrator notes that Dr. Chmell did not provide these opinions in his report, there is no evidence that he reviewed any vocational rehabilitation documentation before he rendered any of his opinions, and there is no evidence that Dr. Chmell was asked to render opinions regarding Petitioner's prospective employability in his report. PX14, pp. 20-22; PX10.

Continued Medical Treatment

On July 30, 2008, Petitioner returned to Dr. Stamelos complaining of numbness and pain in the hand all this time "and has not been listen [sic] to." PX5. He reiterated that Petitioner needed a carpel tunnel release to reach maximum medical improvement and possibly return to some kind of employment although Petitioner was on disability because she had given up on any return to work due to the cervical fusion and associated pain. *Id.* He also noted that Petitioner still felt that she was disabled for any kind of work. *Id.* No objective examination findings were noted at the time of this visit. *Id.*

A "physical residual functional capacity questionnaire" was also completed on July 30, 2008 by a chiropractor noting Petitioner's then-current symptomatology and history of injury. *Id.* It appears that this questionnaire was provided to Dr. Stamelos and Petitioner's SSD benefits legal counsel. *Id.*

On September 15, 2008, Dr. Williams authored a second narrative report in which he ultimately opined that "there was a significant relationship between [Petitioner's] carpal tunnel syndrome and her work activities at Motorola." PX9; PX13 (Ex. 3). He was unable to definitively opine further on the relationship between Petitioner's left lateral epicondylitis condition and her work, if any. *Id.*

In a narrative letter dated January 12, 2009, Dr. Stamelos authored correspondence at Petitioner's request addressed to "to whom it may concern[9]" in which he reiterated that Petitioner had bilateral carpal tunnel syndrome as a result of repetitive usage that required surgery. PX5; PX12, p. 60. He further noted that Petitioner had been awaiting approval for surgery of this essential procedure which was necessary for her manual dexterity inability to function. PX5. In addition, he stated that Petitioner's condition was being aggravated by "the cold and the chronicity." *Id.* He noted the good suggestion that Petitioner go to school to learn computer work and do keyboarding and data entry, but that people with impaired median nerve function and hand pain would find it almost impossible to function on a computer. *Id.* Dr. Stamelos suggested a delay such schooling and, instead, recommended the bilateral carpal tunnel release surgery so that Petitioner could then be vocationally rehabilitated. *Id.*

[9] This correspondence also appears to have been sent to Petitioner's counsel. PX5.

Petitioner returned to Dr. Stamelos approximately one year and nine months later on October 4, 2010 complaining of bilateral wrist pain. *Id.* Dr. Stamelos diagnosed Petitioner with a cervical strain, whiplash and radiculitis of the cervical spine as well as bilateral carpal tunnel syndrome. *Id.* He prescribed Norco and Darvocet, ordered continued "conservative management," and instructed Petitioner to return on an as needed basis for a reevaluation. *Id.* While Dr. Stamelos notes that he evaluated Petitioner in the office, the only objective examination results identified are Petitioner's blood pressure and pulse levels. *Id.*

Approximately 13½ months later, on November 16, 2011, Petitioner returned to Dr. Stamelos' clinic. *Id.* Petitioner cervical spine fusion was noted, and she reported chronic pain. *Id.* Dr. Stamelos noted that Petitioner probably has carpal tunnel, and later noted that she definitely had bilateral carpal tunnel syndrome as proven by objective testing, and that she could not return to work because she had continued dysfunctions and inability. *Id.* Notably, Dr. Stamelos noted that Petitioner had a right-hand dysfunction and that she suffers from depression despite treatment with a psychiatrist[10]. *Id.* Dr. Stamelos opined that Petitioner continued to be disabled by both psychological and psychiatric problems and the physical impairment of her arms. *Id.* He also noted that Petitioner was obese and unable to function because of hand and upper extremity pain. *Id.* He further noted that there were enough problems to make her disabled but they would not treat all of her issues, they would continue to follow her closely "upon her wishes," and that she had not been in for treatment for a significant amount of time although she felt that she was not well and wanted to be under the treatment of a qualified doctor. *Id.* He referred Petitioner back to her neurosurgeon [Dr. Bauer] for the cervical spine and noted that they could treat her for carpal tunnel, but that Petitioner was reluctant. *Id.*

Vocational Rehabilitation - Vocamotive

Petitioner testified that she underwent a vocational rehabilitation assessment at Vocamotive on June 23, 2008 at Respondent's request with Mr. Belmonte. Tr. pp. 57, 124-125, 153-154, 205. Petitioner testified that they attempted to teach her how to use a computer, keyboard and mouse to look for a job. Tr. pp. 57-58. Vocamotive assisted Petitioner in applying for employment and she applied for employment by phone as well. Tr. pp. 58-59. Petitioner did not obtain any job interviews, but did speak with prospective employers over the phone. Tr. p. 59. Petitioner testified she was instructed by Vocamotive not to tell prospective employers that she had a back operation or that she could not use her hands. Tr. p. 59.

The record reflects assessment, progress and discharge reports from Vocamotive between August 6, 2008 and March 9, 2009. RX6. During that time, Petitioner left before the end of her session, she did not attend sessions, she failed to apply for job leads provided, she did not participate in recommended vocational rehabilitation activities for various reasons including reported effects of her medication on her abilities, she voiced her opinion that she could not perform the recommended activities or obtain employment, she did not complete some job logs, and she was otherwise selective in her cooperation for various reasons in recommended vocational rehabilitation activities. *Id.*

Joseph Belmonte ("Mr. Belmonte") is a certified rehabilitation counselor at Vocamotive. Tr. pp. 194-198; *see also* RX5. Mr. Belmonte testified that when a client, like Petitioner, is referred to him his practice is to contact the client and his attorney and schedule an initial interview at which time he takes a detailed history. Tr. pp. 202-204. Then, he reviews the client's medical information and thereafter issues an initial evaluation report.

[10] The treating psychiatrist is noted as Dr. Saulecky, who is noted as having committed suicide. PX5. The only other reference to Dr. Saulecky (or Dr. Solecki) in this record is contained in the deposition of Petitioner's vocational rehabilitation counselor, Ms. Entenberg, who testified that she reviewed an unidentified number of his treating records for Petitioner. PX15, pp. 14, 26.

Tr. p. 204. In accordance with his practice, Mr. Belmonte conducted an initial interview with Petitioner on June 23, 2008. Tr. p. 205.

Mr. Belmonte testified that he did state or suggest to Petitioner that she should not inform prospective employers of her medical problems. Tr. pp. 249-250. Petitioner testified that Mr. Belmonte advised her that he could only address her back issues. Tr. pp. 59-60. She also testified that she told Mr. Belmonte that she was having problems with her hands. Tr. pp. 60-61.

Mr. Belmonte rendered his initial evaluation report and concluded that Petitioner was prospectively employable and he identified specific job targets for Petitioner reflected more specifically on page 12 of his report including unskilled to low semiskilled occupations such as basic food preparer, laborer within a fast food restaurant, certain cashiering positions, some ticket taker positions, parking lot cashier, some light housekeeping occupations, etc. Tr. pp. 205-214. Mr. Belmonte also considered an invalid functional capacity evaluation report in rendering his opinions. Tr. pp. 215-216. With regard to Petitioner's prospective wages, and given Petitioner's very narrow work experience and the kind of jobs being targeted for her, he projected that Petitioner could earn between minimum wage and nine dollars per hour. Tr. pp. 217-218.

Mr. Belmonte testified that there was some difficulty in initially implementing Petitioner's rehabilitation plan due to communication difficulties, which were resolved, and he met with Petitioner again on September 15, 2008. Tr. pp. 219-220. Mr. Belmonte also testified about some of Petitioner's characteristics including that she was always "very direct" and "does not hesitate to express her opinion or state her position with regard to what she believes she wants or may be entitled to or what she may expect." Tr. pp. 220-221. Mr. Belmonte further testified that at Petitioner's initial interview she asked him why he believed he could get her a job if her employer [Respondent] was not going to take her back. Tr. pp. 221-222. He noted that Petitioner's question was not problematic in and of itself, but he did sense after his discussion with her that Petitioner "was in fact prospectively resistant to the process because of what she stated she felt she wanted from the process which was medical treatment and not vocational rehabilitation." Tr. pp. 222-223. Mr. Belmonte further noted that "[Petitioner] manifested from time to time clear frustration and some resistance to being on time or being present on days when we could [effectively] treat her, but which may not have been her preference. She ultimately did not [effectively] job search on days unless she was actually in the office working under our supervision." Tr. p. 223.

Petitioner submitted to additional educational and aptitude testing by Jim Boyd ("Mr. Boyd") at Vocamotive's request and he generated a report on which Mr. Belmonte relied. Tr. pp. 224-226. On cross examination, Mr. Belmonte testified that Mr. Boyd chose the tests to administer to Petitioner which included Woodcock Johnson, Roman III, and Tests of Achievement. Tr. p. 244. As a result, Mr. Boyd identified Petitioner's aptitudes as follows: letter word identification at 6.7 grade level; reading fluency at 5.8 grade level; story recall at 3.6 grade level; mathematical calculation at 10.8 grade level; math fluency at 13.0 grade level; spelling skills roughly $9^{th}/10^{th}$ grade; writing fluency just below 6^{th} grade; and passage comprehension in reading at 4.5 grade level. Tr. pp. 244-246.

Mr. Belmonte testified that his expectations of Petitioner were conveyed to Petitioner at her initial interview and throughout the vocational rehabilitation process. Tr. pp. 226-228. Petitioner was receptive to Vocamotive's offer for computer assistance to help her find a job, but Mr. Belmonte testified that their job search efforts were not directed at finding Petitioner a job utilizing computers. Tr. pp. 228-229.

Petitioner's vocational rehabilitation through Vocamotive ended on March 9, 2009. Tr. pp. 125-126, 229-231. Mr. Belmonte testified that during the course of his conversations with Petitioner he acknowledged her feelings

about the vocational rehabilitation process and that medical treatment was her priority, but iterated that their services would be to her benefit in either actually finding her a job or ultimately determining whether there was a stable labor market for her. Tr. pp. 230-231. He further testified that he regularly attempted to actively enroll Petitioner in their process, but by March 9, 2009, "it became apparent that she was not going to change the orientation and her attitude, and I felt that at that point that I had made every reasonable effort that was likely to produce any change in the stance, and I felt that I was ethically obligated to advise both her and the people that were paying the bill that I really didn't see that it was cost effective to continue to move forward." Tr. pp. 230-231.

More specifically, Mr. Belmonte testified that Petitioner "consistently stated that her objective was medical treatment, surgery for the arms." Tr. p. 231. He testified that he told Petitioner that despite her complaints, which he acknowledged, he had no objectively, medically identified impairment to work with; "[i]n other words, no doctor had ever said that she was impaired with regard to the carpal tunnel syndrome or whatever might be happening in the upper extremities. So it was never identified by a physician that she couldn't do A, B, or C as an example. And without that, I didn't have [any job targets] that I could determine could be taken off the table...." Tr. pp. 231-233. On cross examination, Mr. Belmonte did acknowledge that Petitioner's reports of difficulty holding objects, dropping objects, clasping her clothes, could prospectively create a problem keyboarding or doing computer work. Tr. p. 247. He further acknowledged the fact that prospective pending surgery could be a significant and potentially complicating factor [in finding employment] for an applicant. Tr. p. 247.

Mr. Belmonte also testified that, while Petitioner was aware of their expectation that she would job search on her own, she did not job search on days that she was assigned to do so other than when she was at the Vocamotive office and he discharged her from their rehabilitation program for this reason. Tr. pp. 235-237. On cross examination, Mr. Belmonte acknowledged Petitioner's report of traveling to prospective employers Hallmark and Red Roof Inn, but her visits were unsuccessful. Tr. pp. 262-263. He testified that on one occasion Petitioner stated to him that "she did not mind coming here because it would make her look good in court[,]" and he explained that this statement is notable in the bigger context of his discussions with Petitioner where her focus was that she wanted surgery, she did not believe that she was employable, she did not want to work in food preparation, be a cashier, or change the date of her schedule from Tuesday to Wednesday even if they required her to do so. Tr. pp. 238-239.

On cross examination, Mr. Belmonte also acknowledged that his December 15th report reflects that he told Petitioner that he could not give her a decision on how she should proceed given the fact that the reported carpal tunnel was not a part of the medical situation that Vocamotive was able to use in analyzing her restrictions. Tr. p. 256. Mr. Belmonte did ultimately receive a report from Dr. Stamelos in which he indicated that working on or using a keyboard was not appropriate for Petitioner given the fact that she needed carpal tunnel surgery. Tr. pp. 258-259. He also acknowledged that Dr. Stamelos' recommendation for carpal tunnel release surgery would make driving in very cold weather troublesome for Petitioner. Tr. p. to 61.

As of December 5, 2008, Petitioner keyboarded eight words per minute, she was not doing very well with it, and Vocamotive subsequently discontinued the training because her level of education and language proficiency would never have led them to the performance of a job by Petitioner requiring anything other than some elemental, utilitarian data entry. Tr. pp. 259-260. Mr. Belmonte clarified on re-direct examination that Vocamotive discourages computer-only job searches and that it is not an indicator in the applicant's success in finding a job. Tr. p. 269.

Mr. Belmonte testified that he did not inquire of Respondent whether they had any positions within Petitioner's restrictions because he operates under the assumption that those issues have already been explored and exhausted once she was referred to him for vocational rehabilitation services. Tr. pp. 266-267; *see also* Tr. pp. 268-269.

Petitioner testified that she was never reimbursed for travel expenses, mileage, or tolls to get to and from Vocamotive, although Petitioner requested it. Tr. p. 61; *see also* Tr. p. 252.

Vocational Rehabilitation – Rehabilitation Service Associates

At Petitioner's counsel's request, she also saw Susan Entenberg ("Ms. Entenberg") at Rehabilitation Service Associates on April 16, 2009. Tr. p. 62; PX11; PX15. Ms. Entenberg completed a report thereafter dated May 22, 2009 and testified at a deposition on March 8, 2011. PX11; PX15.

In her report, Ms. Entenberg noted Petitioner's report that she injured herself on September 23, 2004 while lifting a box and she felt a sharp pain in her neck and left arm. PX11; PX15, pp. 7-8. Regarding Petitioner's earlier injury, Ms. Entenberg notes that Petitioner stated "that she sustained an injury to her left upper extremity, neck on October 10, 2001 while under the employ of Motorola." PX11. Petitioner also reported that she could not turn knobs or perform fine movements with her hands, did not chop/peel/cut, could only write for 10 minutes, and could only be at a computer for 15 minutes. PX11; PX15, p. 9.

Ms. Entenberg testified that prior to reaching her opinions she met with Petitioner and obtained information, she reviewed Petitioner's medical records to determine her work restrictions and recommendations, and she reviewed vocational testing records. PX15, p. 10. Ms. Entenberg concluded that Petitioner was not a candidate for further vocational rehabilitation services in consideration of the factors delineated in *National Tea v. Industrial Comm.* whether or not she had bilateral carpal tunnel surgery, that there was no stable labor market for her, and that if she could perform the jobs listed by Vocamotive Petitioner would only be able to earn $8.80 per hour. PX11; PX15, pp. 11-15.

Ms. Entenberg also testified that she understood that Vocamotive was having Petitioner go "to the office to look for jobs and go on-line and job search" and perform "computer activity on a sustained basis" which was not appropriate given Petitioner's report that she could not be on a computer for any length of time, the symptoms in her hands, and the recommendation for bilateral carpal tunnel surgeries. PX15, pp. 11-13.

On cross examination, Ms. Entenberg admitted she met Petitioner only once and that she primarily works with Petitioners in workers' compensation cases. PX15, p. 16. Ms. Entenberg stated that she understood Petitioner's English, although she had to listen, and that Petitioner was a little excitable, frustrated, and a little upset at times throughout their assessment. PX15, pp. 17-18. Ms. Entenberg also stated that Petitioner "felt that she was not capable of working, that she could not work." PX15, pp. 19-20. Ms. Entenberg further stated that she relied on Dr. Bauer's restriction that Petitioner could perform only sedentary work, but she was unable to locate that medical record at the deposition and she admitted that Dr. Bauer's June 14, 2008 report stated that he could *not* conclude what activities Petitioner could or could not perform based on the invalid December 5, 2007 functional capacity evaluation results. PX15, pp. 23-24, 26-28. Finally, Ms. Entenberg acknowledged that the cashier and food preparation worker positions identified by Vocamotive were appropriate unskilled placement jobs for Petitioner. PX15, pp. 29-30.

Petitioner testified that she has continued to look for work after March of 2009 on her own by either submitting applications in person for calling over the phone. Tr. pp. 126-128. She applied for part-time position with

jewel in her neighborhood in Arlington Heights and she called a couple of prospective employers that she found in the newspaper including a hotel for a desk clerk position. Tr. pp. 128-130. She testified that she does not believe she can work with her hands, but she can answer a phone. Tr. p. 130.

Continued Medical Treatment

Petitioner testified that she saw Dr. Stamelos on October 4, 2010 and she believes she has seen him two or three times thereafter. Tr. p. 126. Petitioner understood that Dr. Stamelos' bill was not paid. Tr. p. 146. The Arbitrator notes that the parties have stipulated that if Dr. Stamelos' bill has been paid Respondent would receive credit for that payment. AX1; AX2; Tr. p. 148.

Dr. Stamelos' Deposition

Dr. Stamelos submitted to a deposition on April 17, 2009. PX12. He is a board-certified orthopedic surgeon. *Id*, p. 5.

Dr. Stamelos testified that Petitioner described doing many things at work that were manual, repetitive, and even lifting. PX12, p. 11. He testified that Petitioner reported using tools, screwdrivers, punches and assembling or snapping things together then putting them in a box or wrapping them up "or whatever it is and then at the end she had to put the box on a belt or something and put it on a skid." *Id.* Dr. Stamelos summarized that Petitioner had a variety of duties working the upper extremities and that she could not "work lifting and bending and twisting without the contributions of the shoulder, the neck and the hand." *Id.* On cross examination, Dr. Stamelos testified that his understanding of Petitioner's work was all based on what Petitioner told him. PX12, pp. 61-62. Dr. Stamelos added that "I have many Motorola patients in the past. So my experience with Motorola was repetitive usage of their extremities. But I never actually had a nurse visit me or somebody giving me a job description of [Petitioner's] work." PX12, p. 62.

Dr. Stamelos testified that Petitioner's initial complaints were cervical spine stiffness and pain, left shoulder pain, and tingling in both hands, primarily on the left. PX12, p. 7. On cross examination, Dr. Stamelos conceded that his November 14, 2001 note makes no mention of carpal tunnel condition or findings with regard to Petitioner's hands. PX12, pp. 38-40. He further conceded that his note of Petitioner's December 5, 2001 visit makes no mention of carpal tunnel although he explained that the C6/C7 innervates the same area of the hand that the carpal tunnel innervates and he did not have any specific objective testing of carpal tunnel at that time. PX12, p. 41.

On cross examination, Dr. Stamelos testified essentially that Petitioner's very large herniation at C6/C7 on the left was masking Petitioner's mild to moderate carpal tunnel syndrome through February 20, 2002. PX12, pp. 42-43. He also testified that Petitioner complained more about left-sided symptoms than right-sided symptoms through March of 2002. PX12, p. 48. Then, Dr. Stamelos further testified on cross examination that Petitioner was complaining more about right-sided symptoms in 2009, but qualified his response by stating that Petitioner's left-sided symptoms masked Petitioner's right-sided symptoms. PX12, p. 48.

Petitioner did not show Dr. Stamelos how she performed her work. PX12, pp. 11-12. Dr. Stamelos merely noted that Petitioner did thousands of maneuvers per day automatically according to her report. *Id.* Dr. Stamelos opined that various maneuvers performed repetitively by Petitioner is the "most consistent and accepted way to create carpal tunnel." PX12, pp. 12-13. Dr. Stamelos also testified that Petitioner never stopped complaining about her hands, but "[w]hen I took her off of work, her symptoms subsided, by [sic] her condition didn't improve." PX12, p. 13. On cross examination, Dr. Stamelos testified that he took Petitioner

off work even when her carpal tunnel syndrome was not improving because Petitioner had multiple orthopedic problems and a psychiatric problem. PX12, p. 59. He testified that he would not have necessarily taken Petitioner off work solely for the carpal tunnel syndrome and might have only restricted her work, but he also testified that "Dr. Bauer also had a lot to do with it." PX12, p. 60.

Dr. Stamelos testified Petitioner's neck and shoulder symptoms improved after her neck surgery, but "there has been a consistency to the symptoms of her hand. When she didn't work or didn't use her hand, the symptoms are not as strong but she still has difficulty with cold, when she sleeps, she has difficulty buttoning her buttons. In other words, the condition is ongoing and stagnant and nonimproving. In other words, the intensity of the symptoms worsened with her doing anything manual, but if she doesn't do anything, she doesn't get an improvement, she just has the carpal tunnel condition, primarily on left and some on the right." PX12, pp. 18-19.

To explain why Petitioner's carpal tunnel syndrome did not improve while she was away from her job, Dr. Stamelos testified about the deterioration of the ligaments, bones, and tendons in the carpal tunnel due to overuse, age, gender, and other factors such that "once you have carpal tunnel you cannot not have carpal tunnel." PX12, pp. 19-22. He further testified that while Petitioner "would have had carpal tunnel" given the type of work that she was doing at 20 years old, her carpal tunnel syndrome has nothing to do with her gender and normal hormonal changes at her age, but rather it was in addition to her predisposing factors. PX12, pp. 22-23. On cross examination, Dr. Stamelos acknowledged that there were many studies showing a peak of carpal tunnel symptomatology in women during menopause between 45 and 55 years of age, however he believed that there had not been any studies regarding Petitioner's particular body habitus (i.e., approximately 190 pounds and 5'3 tall) and the incidence of carpal tunnel. PX12, pp. 47-48. He also testified that the lack of surgical intervention for carpal tunnel syndrome could have had an impact on the severity of Petitioner's condition and that Petitioner continued to refuse such surgery through July of 2003. PX12, pp. 46, 49-50.

Regarding Petitioner's capability of returning to work, Dr. Stamelos testified that "it would have to be one of these special jobs that would be a job that would have to -- we do a functional capacity evaluation and she would just sit and watch a TV screen or an inspector or somebody, in other words where there is no use of the hand. And then there is issue of getting to work and coming home and there is an issue of cold versus warmth. In other words the hands are very sensitive to the cold, so it would have to be a designer job for her to work." PX12, p. 25.

In response to a lengthy hypothetical question posed by Petitioner's counsel, Dr. Stamelos testified that Petitioner was "the poster girl for repetitive motion carpal tunnel disease. There is no question in my mind that her condition, 3000 manual repetitive usage of her extremities a day, doing the work at Motorola, contributed and caused her carpal tunnel primarily in the left, but also on the right." PX12, pp. 25-29. He further testified that the same repetitive conditions that cause carpal tunnel can also cause lateral epicondylitis in some people and that the conditions were irreversible and could only be corrected with surgery. PX12, pp. 29-30. According to Dr. Stamelos, Petitioner did not know what carpal tunnel was until she saw him and that when he "told her about the surgery she was completely against it because she thought I was making it up." PX12, pp. 30-31. Ultimately, Dr. Stamelos testified that he was "positive" that Petitioner's work activities contributed or caused Petitioner's carpal tunnel. PX12, p. 36.

Dr. Stamelos opined that Petitioner could not return to a repetitive nature job at that time. PX12, p. 30. On cross examination, he clarified this opinion and testified that Petitioner would never be able to return to repetitive usage work without an operation. PX12, p. 46.

Dr. Stamelos opined that the vocational training that Petitioner was receiving for computer usage was inappropriate because Petitioner's carpal tunnel syndrome was a deterrent for manual work, data entry, or computer work. PX12, p. 30.

Elli Taylor

Elli Taylor ("Ms. Taylor") testified that Petitioner's counsel had previously represented her in a worker's compensation case against Respondent related to her left hand/thumb while working on a different line from Petitioner. Tr. pp. 159-160, 174. Ms. Taylor testified that her case was settled. Tr. p. 160.

Ms. Taylor testified that she worked in the same department as Petitioner for a long time. Tr. p. 160. She also viewed Respondent's Exhibit 4 and testified that it only partially accurately portrayed what Petitioner did at work. Tr. p. 161. Ms. Taylor testified that Petitioner worked a lot on laser, which was shown in a little bit of the video, but Petitioner also did a lot of work in manual tune and there were only a few people that could do that "[b]ecause it's very, very difficult." Tr. p. 161. Ms. Taylor observed approximately three or four other employees, including Petitioner, performing manual tune duties while Ms. Taylor worked for Respondent, but she did not ever perform manual tune duties after one unsuccessful attempt to do so. Tr. pp. 162-167, 170, 181-182.

Ms. Taylor testified that she observed Petitioner performing work on laser and operating about four machines. Tr. p. 170. She testified that she did not observe others operating four machines. Tr. p. 170. Ms. Taylor also testified that she observed Petitioner working in pick and place once in a while and very little "because it's one of the easier jobs." Tr. p. 172.

In addition, Ms. Taylor testified that everyone did FQA/inspection and that whenever there was a problem, such as an injury, Respondent would place the employee in inspection because it was easy and not hard on the neck or back or hands because the employee is looking at something through a magnifying glass to determine if all the parts are in their proper place. Tr. pp. 172-173.

On cross examination, Ms. Taylor testified that in 2001 she worked in the microcircuits department for approximately 3-4 years and her supervisor with Keith Lulik. Tr. pp. 176-177. Ms. Taylor testified that she was transferred and believed that she still worked in the same area, microcircuits, in 2004 for one year under another supervisor, Maria. Tr. pp. 177-178. Ms. Taylor was never supervised by Petitioner supervisor, Frank Neugebauer. Tr. p. 178.

Ms. Taylor also testified that while she was employed by Respondent she did laser trimming, pick and place, and FQA. Tr. p. 181. Ms. Taylor testified that FQA and pick and place are light jobs, but laser trim is not because the employee was standing—although she also testified that the employee is not really lifting anything. Tr. p. 182.

Additional Information

Petitioner testified that she was terminated from her position with Respondent and she has not worked since September 24, 2004 for any employer. Tr. pp. 55, 119. Petitioner testified that she has not received any other workers' compensation [benefits payments] other than those to which she testified at trial. Tr. p. 55.

Petitioner remains under the care of a primary care physician and occasionally sees Dr. Stamelos. Tr. p. 56. She also testified that she is ready willing and able to undergo the recommended carpal tunnel surgery. Tr. p. 61.

As of the date of her testimony, Petitioner testified that she is in pain and cannot sit or stand for more than a certain amount of time because of her back. Tr. pp. 63-64. She also testified that she lost the ability to move her body more than 40% and that she has to move her whole body to the left or to the right, that she has difficulty bending her head in the front or in the back to wash her hair, that she cannot lift herself from sleep (that she has to reach for something like the bed board in order to get up from the bed), that she suffers while it is raining, and that she is on pills. Tr. pp. 63-64.

With regard to her hands, Petitioner testified that they were numb, that she loses objects from her hands, that she sometimes lacks feeling in her hands when handling money, that her thumb is tingling like it is stuck, and that she cannot move her right thumb at all. Tr. pp. 64-65. She also testified that she experiences this in both hands, but that her right hand is worse. Tr. p. 65.

Petitioner can drive her van, but testified that she cannot sit for a long time and drives only for shopping and similar activities because of pain that "is killing her" in the upper thoracic lower cervical spine area. Tr. pp. 131-134.

ISSUES AND CONCLUSIONS

The Arbitrator hereby incorporates by reference the Findings of Fact delineated above, and the Arbitrator's and parties' exhibits are hereby made a part of the Commission file. After reviewing the evidence and due deliberation, the Arbitrator finds on the issues presented at trial as follows:

In support of the Arbitrator's decision relating to Issue (F). whether the Petitioner's current condition of ill-being is causally related to the injury. the Arbitrator finds the following:

Cervical Spine and Left Arm Radiculopathy

The Arbitrator notes that the parties do not dispute causation regarding Petitioner's cervical spine injury stemming from either date of accident. Notwithstanding, the Arbitrator finds that Petitioner's cervical spine condition and the associated left arm radiculopathy is causally related to her undisputed accident on October 10, 2001 which was aggravated on the date of her second undisputed accident, September 23, 2004.

Petitioner's testimony about the traumatic mechanism of injury occurring on October 10, 2001 and her onset of symptoms is corroborated by record evidence, supported by contemporaneous and objective test results, and supported by objective clinical findings made by various treating physicians and independent medical examiners. Regarding her first accident, Petitioner testified that she felt a hard, stinging pain in her back when she pulled a box of fixtures while working on the pick and place assembly line. Regarding her second accident, Petitioner testified that she was lifting boxes on September 23, 2004 when she hurt herself and felt a sharp pain. Overall, the record corroborates Petitioner's testimony about these traumatic mechanisms of injury at trial as well as her symptoms from each date of injury through the date of her testimony at arbitration.

Furthermore, there is no evidence that Petitioner had any cervical spine injury, left shoulder injury, or left-sided symptoms radiating down to her mid-arm prior to her first accident. The record contains credible evidence that Petitioner's second accident aggravated her cervical spine condition—although Petitioner initially refused recommended surgical intervention for years—given Dr. Bauer's objective findings throughout his treatment of Petitioner particularly when viewed in light of the Section 12 opinions rendered by Drs. Skaletsky and Levin. While the Arbitrator notes that Petitioner's treating physician, Dr. Bauer, placed her at maximum medical improvement regarding her cervical spine condition on October 31, 2007, and that Dr. Levine also opined that Petitioner had reached maximum medical improvement, the parties proceeded to trial pursuant to Petitioner's Section 19(b) and Section 8(a) motion and a finding on the nature and extent of Petitioner's injuries is premature.

Based on the foregoing and the record as a whole, the Arbitrator finds that Petitioner's current cervical spine condition and associated left arm radiculopathy is causally related to her undisputed accident on October 10, 2001 which was aggravated on the date of her second undisputed accident, September 23, 2004.

Bilateral Carpal Tunnel Syndrome

The Arbitrator finds that Petitioner failed to meet her burden of proof to establish a causal connection between her current bilateral carpal tunnel syndrome condition and either accident at work. Specifically, the Arbitrator finds that Petitioner's testimony at trial with regard to this condition is not credible, overall, and that it is materially and repeatedly inconsistent with other record evidence. Moreover, the Arbitrator finds that the opinions of Petitioner's treating physicians, Dr. Stamelos and Dr. Williams, as well as the opinion of Petitioner's independent medical examiner, Dr. Chmell, are unpersuasive given the record as a whole.

First, the Arbitrator addresses Petitioner's testimony about her assigned job duties and actual work activities as compared to record evidence; it is erratic, at best. The record contains varied, vague and contradictory reports made by Petitioner at trial about the job duties she was required to perform and the work activities in which she actually engaged when compared to reports made by her to treating physicians and Section 12 examiners. The record is similarly incongruent as to the amount of time (i.e., hours per day, days per week, etc.) that Petitioner spent performing any particular duty (i.e., using tweezers/pliers, lifting up to 50 lbs., using screwdrivers with 15-20 lbs. force, using vibratory tools, etc.) in any position (i.e., pick and place, laser, inspection/repair, light duty positions, etc.) and for how long she did so (i.e., weeks per month, months per year, etc.). While Petitioner is not a sophisticated claimant and she might not reasonably be expected to recall exact details about her job duties and actual work activities during exact time frames over many years, it is reasonable to expect that Petitioner could consistently recall general details of her job duties and work activities performed during general timeframes that generally correlate to reports made by her to physicians since her first injury in 2001. Given the disparity in the record regarding whether Petitioner injured herself in two traumatic incidents or whether she sustained repetitive trauma injuries as she now claims stemming in whole or in part from her work activities, Petitioner's evidence about her job duties and actual activities is significant. The Arbitrator finds that Petitioner's testimony is wholly inconsistent with record evidence about her job duties and the work activities that she actually performed and, thus, is not credible.

To wit, the record reflects the following varied, vague, inconsistent and/or directly contradictory reports offered by Petitioner: (1) she worked in manual tune for several years approximately 80% of the time 10 hours per day/5 or 6 days per week and she worked in laser much of the remaining time and, limitedly, filled in the pick and place and inspection/repair positions; (2) when she worked in manual tune, she used a small screwdriver-type tool on small circuit boards of differing sizes and she turned her fingers all day long in all directions; (3) when she worked in laser she did so approximately 8-10 hours per day, 4-5 days per week in 2002 and 2003; (4) when she worked in laser she operated four laser machines simultaneously by going from one machine to another and "[j]umping like crazy, around" however she admitted that when she worked in laser she only used a computer mouse; (5) when she worked in laser, she worked four machines, which is contradicted by an October 14, 2004 incident report reflecting that she was working three machines which was crossed out; (6) she worked using an air gun with 15-20 pounds of pressure to close transceivers with screws while in the repairs position, although there is no specification for how often or for how long; (7) in the FQA position she worked in a seated position and used tweezers/brushes/pliers to inspect/clean circuit boards of varying sizes and types that came down a conveyor belt before placing completed ones into a box; (8) in the pick and place position she would snap a part onto a circuit board that came to her on a conveyor belt then placed assembled boards back onto to the conveyor belt; (9) she was lifting 50 lbs. every twenty minutes in her full duty job before her first injury, although there is no specification about what that job was or how long she was in that job; (10) she worked "light duty" after her return to work [in August of 2002] until April of 2004; (11) she only worked "light duty" for one or two weeks after her return to work in August of 2002 before she was performing full duties again, which is contradicted by an October 2, 2002 note and another February 25, 2004 note of Dr. Stamelos that Petitioner was still working light duty; (12) Respondent never accommodated her restrictions with light duty work and she was lifting up to 50 lbs. again before her second injury on September 23, 2004, although there is no specification about what that job was or how long she was in that job; and (13) she worked on an assembly line performing unspecified repetitive motion activities with her hands and wrists for 27 years and she had worked primarily with tweezers and screwdrivers while working on transceivers "doing pretty much the same thing" on a daily/weekly/monthly/ yearly basis since approximately 2001.

As reflected in the findings of fact, the aforementioned list of inconsistencies between Petitioner's reported job duties and actual work activities before and at the time of both accidents at work is not exhaustive. The

variations in Petitioner's reports on this subject at trial are evident when comparing her testimony on direct and cross examination as well as when comparing her testimony overall with reports that she made to treating physicians and independent medical examiners in contemporaneously created records. Petitioner's reports about her job duties and work activities are also inconsistent with and contradicted by written job descriptions. In particular, while the job descriptions offered by Petitioner require repetitive movements, none of them require sufficient force or significant use of vibratory tools as opined by Dr. Fernandez to make the repetitive motions a contributing factor in the development of Petitioner's bilateral carpal tunnel syndrome. In any event, the variations in reported job duties bear unfavorably on Petitioner's credibility.

Moreover, Petitioner's physicians, Dr. Stamelos, Dr. Williams and Dr. Chmell (an independent medical examiner), all relied on Petitioner's reports about her job duties and actual work activities and/or a summary of these created by her attorney in opining that causal connection exists between her condition and both accidents at work. The work activities performed by Petitioner as reported by her vary from one physician to the next and none of the aforementioned physicians reviewed Petitioner's written job descriptions, physical demand requirements, or viewed any video depicting any of the types of work activities in which Petitioner was required to engage at any point during her employment with Respondent.

Second, the Arbitrator notes that the contradictions contained in the record about the mechanisms of Petitioner's injuries. While accident is not in dispute, the Arbitrator notes that Petitioner's applications for adjustment of claim in both cases, the histories given by Petitioner throughout her treatment, and the information made available to physicians opining on causal connection initially allege traumatic injuries and *not* repetitive trauma injuries. Petitioner's reports on this subject are as disparate as her reports about her job duties and work activities (e.g., Petitioner's report to Dr. Chmell on June 14, 2008 approximately 7 years after her first injury that she injured herself on October 10, 2001 when she was repeatedly lifting and pulling 50-pound boxes of steel fixtures resulting in left shoulder and arm pain is singular and contradicted by several other versions of the mechanism of injury on that date throughout the record). In at least one instance, Petitioner also refused to provide historical information to a physical therapist during a functional capacity evaluation about her September 23, 2004 injury. PX6 (On December 5, 2007, Petitioner reported that she had a work related injury to her neck on September 23, 2004, but "**refused to give the therapist any additional history.**" (**emphasis** in original)). The FCE was deemed invalid due to submaximal effort. While the discrepancies regarding the mechanisms of injury alone might not be dispositive even on the issue of accident, it is limitedly relevant here where the dispute centers on whether Petitioner's bilateral carpal tunnel syndrome developed in whole or in part as a result of repetitive trauma and not any traumatic injury. The Arbitrator finds that these discrepancies further erode Petitioner's credibility and they bear on the reliability of the opinions rendered by Dr. Stamelos, Dr. Williams and Dr. Chmell because they relied primarily on Petitioner's reports.

Third, the Arbitrator addresses the causal connection opinions of Dr. Stamelos, Dr. Williams, Dr. Chmell, and Dr. Fernandez. The first three physicians opine that a causal connection exists between Petitioner's bilateral carpal tunnel syndrome and one or both work injuries. Dr. Fernandez opines that no causal connection exists; the Arbitrator agrees.

Dr. Stamelos fervently contends in his deposition, in narrative reports, and throughout his treating records that Petitioner's repetitive work activities contributed to and caused her bilateral carpal tunnel syndrome. The Arbitrator finds that Dr. Stamelos' opinion is not persuasive and gives it no weight.

At trial, Petitioner testified that she was injured on October 10, 2001 when she pulled fixtures from below the assembly line to place them on the table while working the pick and place position. She then experienced a

"hard pain" in her back. Given the record as a whole, it is apparent that Petitioner sustained a traumatic injury resulting in immediate onset of symptoms that she localized to the back of her neck and/or her left shoulder which was ultimately diagnosed and treated as a cervical spine condition. In any event, the fact that Petitioner sustained a traumatic injury is corroborated by the record overall and it is inconsistent with Dr. Stamelos' medical records that Petitioner purportedly reported a repetitive trauma injury from the beginning.

On November 14, 2001, Dr. Stamelos' records show that reported an injury to her left shoulder due to repetitive usage. His records from this date forward are consistently inconsistent regarding whether Petitioner injured herself in a traumatic incident while pushing/pulling/lifting weight, or if she had a traumatic onset of pain secondary to repetitive usage of the left upper extremity (or both extremities, for that matter). Contemporaneous diagnostic records reveal that Petitioner reported a traumatic pushing and pulling injury and not an injury stemming from repetitive usage as Dr. Stamelos contends. Even the MRIs and EMG/NCV that Dr. Stamelos ordered were performed to rule out left shoulder impingement versus a rotator cuff tear as a result of a pushing/pulling injury and not to diagnose any repetitive trauma medical condition based on left-sided or certainly bilateral carpal tunnel syndrome symptomatology.

These important contradictions are highlighted in Dr. Stamelos' deposition. He testified that, while Petitioner told him that she injured herself secondary to pushing a lot of weight, "*[w]ell, that's what she said in Greek, **maybe I misinterpreted. What she meant was repetitive motion. There is no Greek word for repetitive motion**. Pushing a lot of weight or doing a lot of work, work with her hands of course.*" PX12, p. 51 (***emphasis added***). He added, "***I think** there is weight involved*, but ***I think she meant** just an awful lot of work went through her hands*, that would be a good way to describe it. [.... And, there] was lifting in her job. ***She said** she had to lift some boxes after she filled them, but **she said** most of her work was doing repetitive motion. And somebody, **I think, I don't remember**, somebody **I think** it was this doctor who saw her, said she did like 3,000 maneuvers a day or something*[, which was Petitioner's estimate to that doctor and probably to him as well.]" PX12, pp. 51-52 (***emphasis added***). In addition to the self-evident inconsistencies and liberal interpretations made by Dr. Stamelos about what Petitioner said and what he thinks she meant to say, the Arbitrator notes that a simple internet search for the Greek-English translation of the word "repetitive" renders several immediate results including one for the phrase "done repeatedly."

On cross examination, Dr. Stamelos gave a general differential diagnosis explanation to account for his treatment and focus on Petitioner's central issue (i.e., the neck/left shoulder) instead of her left hand and then both hands for suspected carpal tunnel syndrome. In addition to the context explained above, Dr. Stamelos' otherwise reasonable explanation for his initial treatment and diagnostic focus is not persuasive in this case when his records so blatantly lack in objective clinical findings at most visits such that his diagnoses and ultimate causal connection opinions are reliable. Based on the foregoing, the Arbitrator finds that Petitioner did not report any repetitive usage injury to Dr. Stamelos, but rather that he inferred and concluded as much without relying on objective medical evidence in support thereof.

In addition, Dr. Stamelos admits that he did not review Petitioner's specific job description(s), he is unsure of what exactly Petitioner did "3,000" times per day over 27 years, and Petitioner did not demonstrate to him the repetitive activities that she performed at work. He admits that he had many of Respondent's patients in the past so his "experience with Motorola was repetitive usage of their extremities." He also admits that in at least one instance he essentially gave Petitioner the opinion that she wanted in a narrative report because he "would just rather write it and get her off [his] back than argue with her." PX12, pp. 50-51.

Similarly, the Arbitrator finds that Dr. Stamelos' causal connection opinion regarding Petitioner's bilateral carpal tunnel syndrome and her September 23, 2004 injury is unpersuasive. Dr. Stamelos failed to note

objective clinical findings at most of Petitioner's visits to support his opinion. He relied on Petitioner's unreliable and inconsistent reports about the mechanism of injury. Dr. Stamelos also relied on Petitioner's inconsistently reported job duties and actual work activities, while opining on causal connection without the benefit of any actual job description or other indication of Petitioner's actual work activities. Moreover, as reflected in his deposition testimony, Dr. Stamelos had already opined that Petitioner's work activities caused her carpal tunnel syndrome and he steadfastly maintained his causal connection opinion regarding Petitioner's September 23, 2004 injury while relying primarily on Petitioner's unreliable reports to him.

For example, at trial Petitioner testified that she sustained a traumatic injury while lifting boxes when she hurt herself and felt a sharp pain. Petitioner's testimony on direct and cross examination and her handwritten incident report dated October 14, 2004 conflict regarding the position that she worked when she was injured, manual tune or laser. In further contrast, Dr. Stamelos' records contain two different progress notes dated September 27, 2004 in which Petitioner reportedly sustained "a repetitive motion injury while working in the assembly line" and that she returned after an injury at work four days earlier with "quite significant" pain complaints of neck stiffness, pain, and radiculopathy "that has occurred since the time of the injury while working at Motorola." Dr. Stamelos' most contemporaneous progress notes to Petitioner's September 23, 2004 injury do not specify Petitioner's job at the time of her injury or any objective clinical findings or measurements to support his contention that Petitioner's previously diagnosed bilateral carpal tunnel syndrome was somehow aggravated by the incident at work.

In fact, Dr. Stamelos admitted on cross examination that Petitioner had no hand complaints only four days after her second work accident all the way through November 17, 2004. He further admitted that he did not treat Petitioner for carpal tunnel syndrome from the second half of 2004 through 2007, although he qualified his response by stating that he treated Petitioner for the more important cervical injury. Indeed, Dr. Stamelos could not reasonably treat Petitioner for bilateral carpal tunnel syndrome as his records do not refer to Petitioner's carpal tunnel condition until July 31, 2006 and they are similarly devoid of reference to objective findings through that date and thereafter supporting his ultimate, albeit conclusory, opinion that Petitioner's work activities somehow aggravated Petitioner's already causal connected bilateral carpal tunnel syndrome.

Dr. Stamelos' records are also conspicuously devoid of objective clinical findings or corroborative symptomatology complaints made by Petitioner to support his conclusion about the relatedness of Petitioner's bilateral carpal tunnel syndrome to her work activities after either injury at work. Even assuming that Petitioner's report of numbness, pain and tingling radiating down to the first three digits of the left hand on November 14, 2001 and December 5, 2001stemmed from Petitioner's left sided carpal tunnel syndrome as a result of either a traumatic or a repetitive trauma injury, Dr. Stamelos' records are devoid of any physical examination findings related to the left hand or wrist, much less the right hand or wrist, through the majority of his treatment of Petitioner. In fact, the first time that Dr. Stamelos' records refer to carpal tunnel syndrome is on December 11, 2001 in Petitioner's EMG/NCV results. Prior to and even after this date, Dr. Stamelos' records do not reference any Tinel's, Phalen's or any other objective examination findings to clinically correlate Petitioner's left hand numbness and tingling into the first three digits with her repetitive work activities as opposed to radiculopathy stemming from Petitioner's later-diagnosed cervical condition. Dr. Stamelos even admits in his deposition that Petitioner never showed him exactly what she did at work and he never reviewed any job description for Petitioner such that he could plausibly opine based on objective medical evidence that her left (or right) hand condition resulted even in part from activities at work.

Additionally, Petitioner did not complain of any traumatic injury to the right arm, hand or wrist at any time, nor did she report any right hand/wrist symptomatology until March 20, 2002 when she had been off work for a little over four months and she first reported "numbness and tingling *in the bilateral hands*, left hand worse than

right." PX5 (*emphasis added*). Thereafter, on October 2, 2002, while Petitioner was working light duty Dr. Stamelos diagnosed Petitioner with "[c]ontinued bilateral hand pain, carpal tunnel syndrome and cervical syndrome" even though the work note provided for her only reflects "cervical strain, radiculitis" and different work restrictions than those identified in Dr. Stamelos' progress note. PX5. Petitioner did not seek medical treatment again for nine months until July 2, 2003 and then again for approximately eight months until February 25, 2004 at which time Dr. Stamelos noted that Petitioner would either need surgery at C5-C7 or permanent work restrictions to accommodate the herniated discs in her neck and left radiculopathy, but he did not mention Petitioner's carpal tunnel syndrome, any complaints by Petitioner of bilateral hand pain or right-sided symptoms, much less any objective clinical findings on examination of Petitioner. Approximately one month later, on March 31, 2004, Petitioner returned reporting ongoing neck pain, but she did not report pain in either arm or hand. Three months afterwards, on June 30, 2004, Dr. Stamelos noted that Petitioner had carpal tunnel syndrome and needed surgery, that she had low back pain, and cervical spine syndrome due to herniated discs at C5-C7 "all from an injury on October 10, 2001 at Motorola." PX5. Petitioner's only report of low back pain prior to this time was on July 2, 2003, approximately one year and nine months after her work accident, and now one year after her only complaint of low back pain on July 2, 2003.

Another three months later (and four days after her second accident) on September 27, 2004, Dr. Stamelos noted that Petitioner returned after sustaining "a repetitive motion injury while working in the assembly line and pushing fixtures." PX5. This mechanism of injury is similar to that reported by Petitioner on cross examination and noted in Dr. Stamelos' November 14, 2001, July 2, 2003, and February 25, 2004 progress notes. He diagnosed Petitioner with herniated discs at C5-C7, but makes no mention about carpal tunnel symptomatology or examination findings in either arm or hand other than radiating symptoms to the left upper extremity from the cervical condition. Dr. Stamelos' records contain two different progress notes dated September 27, 2004, the second of which refers to Petitioner's September 23, 2004 accident after which she complained of significant neck stiffness, pain, and radiculopathy that Dr. Stamelos noted "has occurred since the time of the injury while working at Motorola. The radiculopathy and the pain was so severe that she had to get an emergency appointment to see me where I will try to treat her for these new symptoms that she has developed." PX5. Dr. Stamelos' records, however, are unclear about the new symptoms that Petitioner reported on September 27, 2004, whether they involved Petitioner's bilateral hands, and no objective examination findings are noted that distinguish Petitioner's new symptoms from those resulting from the October 10, 2001 injury. Again, Dr. Stamelos does not reference any symptomatology or diagnoses in any other body part whatsoever and no objective evaluation of Petitioner's hands was identified in the records. Dr. Stamelos' records continue to be vague through October 13, 2004 and refer to a continuation of the "current course of management" without any objective clinical examination findings regarding Petitioner's neck, arms, or hands in reference to any of Petitioner's reported symptomatology. As reflected in the findings of fact, the aforementioned list of missing or inconsistent information contained in Dr. Stamelos' records is not exhaustive. Based on all of the foregoing, the Arbitrator finds that Dr. Stamelos' causal connection opinions with regard to either of Petitioner's work accidents are unpersuasive and gives them no weight.

Finally, the Arbitrator gives little weight to the opinions of Dr. Williams and Dr. Chmell. Dr. Williams' causal connection opinion is predicated on a single examination, limited medical records available for review, and incomplete, if not completely inaccurate, information about Petitioner's work activities. Dr. Williams admitted that he did not have Petitioner's actual job description to consider, he did not view any video depicting any of Petitioner's job duties, and he also testified that he based his opinion on his understanding that Petitioner worked in manual tune which required repetitive forceful activities, extensive use of small tools, continuous gripping/grasping/pinching/fine motor activities, and the use of vibratory tools garnered from Petitioner's reports to him and a summary of work duties compiled by Petitioner's counsel. According to her testimony at trial, Petitioner was not working on manual tune or performing related functions at the time of either incident in

2001 or 2004. As explained in detail above, the job duties and work activities reported by Petitioner conflict throughout the record.

Dr. Williams also admitted that there was an increased incidence of carpal tunnel syndrome stemming from genetic factors including age, gender (in postmenopausal women), and increased weight. Regarding the curious increase in Petitioner's symptomatology while she was not at work, Dr. Williams contended that her bilateral carpal tunnel syndrome was "masked" by the cervical spine condition and related symptomatology and that Petitioner initially sustained a "double-pinch" or "double-crush" injury. Dr. Williams' opinion does not, however, adequately explain how Petitioner's left sided cervical spine condition and symptoms masked right sided carpal tunnel for years which is in a very different anatomical distribution than Petitioner's left sided carpal tunnel.

Dr. Chmell's causal connection opinion is similarly predicated on a single examination, limited medical records available for review, and incomplete, if not completely inaccurate, information about Petitioner's work activities and the mechanisms of injury. Based on all of the foregoing, the Arbitrator assigns little weight to the causal connection opinions of Dr. Williams and Dr. Chmell.

The Arbitrator does find Dr. Fernandez's opinion to be persuasive given the totality of this record. He is the only physician to review any job description or specific physical demand description of any of Petitioner's positions with Respondent. He is the only physician that viewed the performance of any of Petitioner's activities at work in a video, even if the activities were done at a slower pace or on fewer machines than Petitioner reports she worked. He is also the only physician to plausibly explain that the potential multifactorial causes of carpal tunnel syndrome do not automatically result in a causal connection opinion linking a patient's work activities and carpal tunnel syndrome; each factor much be considered in the full context of the patient's case including consideration of the specific work activities. For example, Dr. Fernandez plausibly explained that repetitive hand/wrist activities, the use of a vibratory air tool, or the use of any hand tool no matter how repetitively, would not in and of itself cause bilateral carpal tunnel syndrome; it would depend on the type of tool and the force associated with the use of the tool and the repetitive and *heavy* or *forceful* gripping/grasping/ tool use. Dr. Fernandez also admitted that while Petitioner's reported tasks were repetitious and had occurred over decades they were also relatively varied and none of the activities involved gripping or grasping with significant force, the use of heavy tools, or significant hyperextension or hyper flexion for prolonged periods of time.

Furthermore, Dr. Fernandez noted that carpal tunnel syndrome is most commonly seen in females in Petitioner's age group, that Petitioner was at additional risk given her increased body mass index, and that, while there was no doubt that Petitioner's symptoms may increase or worsen with exposure to work activities, her condition could also increase or worsen with exposure to *any* activities which did not warrant a finding of causal relationship or aggravation on that basis alone. Given the totality of the record, the Arbitrator finds that Dr. Fernandez's opinion is persuasive and assigns greater weight to the opinion of Dr. Fernandez in this case because his opinions are based on objective information and a more complete understanding of Petitioner's medical condition and work activities rather than speculation, inference, conjecture or, primarily, Petitioner's incomplete and unreliable reports.

Based on all of the foregoing, the Arbitrator finds that Petitioner failed to meet her burden of proof to establish a causal connection between her current bilateral carpal tunnel syndrome condition and either accident at work.

Petitioner contends that her left elbow condition is causally connected to one or both of her injuries at work. Petitioner did not testify about any mechanism of injury occurring on either date of accident that would plausibly give rise to her claimed current condition of ill being in the left elbow. Indeed, the record is devoid of any elbow complaints made by Petitioner until May 7, 2008, over 6½ years after her first accident and over 3½ years after her second accident. On this basis alone, the Arbitrator finds that no causal connection finding is reasonable given the enormous gap in time between Petitioner's accidents and any onset of left elbow symptomatology. The Arbitrator also notes that Petitioner was not working during much of this time frame.

Notwithstanding, Petitioner's own physician, Dr. Williams, essentially discounts any such causal connection finding. While he opined that Petitioner's lateral epicondylitis is causally related to her injuries at work, he could not identify when Petitioner's elbow symptoms began and he admitted that Petitioner's symptoms developed in middle age which would not be masked by her cervical condition because it was not located in the same anatomical distribution. Based on all of the foregoing, the Arbitrator finds that Petitioner has not established a causal connection between her claimed current left elbow condition of ill being and either work accident.

In support of the Arbitrator's decision relating to Issue (J), whether the medical services that were provided to Petitioner were reasonable and necessary, and whether Respondent has paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator finds the following:

Petitioner alleges entitlement to payment of $8,913.00 in outstanding medical bills from Dr. Stamelos only. AX1;AX2. The bills submitted from Dr. Stamelos reflect dates of service, but not the specific medical treatment underlying each bill. PX16. As causal connection has been resolved in Petitioner's favor with respect to her cervical spine and left arm radiculopathy condition only, the Arbitrator finds that any medical bills related to Petitioner's cervical spine and left arm radiculopathy condition are reasonable and necessary. The Arbitrator awards such bills. The Arbitrator further finds that any medical bills related to Petitioner's bilateral carpal tunnel syndrome or left lateral epicondylitis conditions are not reasonable or necessary and such bills are denied.

In support of the Arbitrator's decision relating to Issue (O), Petitioner's entitlement to prospective medical care, the Arbitrator finds the following:

As causal connection has been resolved against Petitioner with respect to her bilateral carpal tunnel syndrome or left lateral epicondylitis conditions, the Arbitrator denies the requested prospective medical care related thereto.

STATE OF ILLINOIS)
) SS.
COUNTY OF)
WILLIAMSON

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

JASON HAHS,

Petitioner,

vs.

NO: 10 WC 45193
11 WC 25184

141WCC0100

STATE OF ILLINOIS /
BIG MUDDY RIVER CORRECTIONAL CTR.,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, and nature and extent, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission makes a special finding that this case is easily distinguishable from the decision in *Branden Schrader v. State of Illinois / Big Muddy River Correctional Ctr.*, 13 IWCC 0089 (1/28/13), which Petitioner cited in his brief.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 19, 2012, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

14IWCC0100

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

DATED: FEB 1 1 2014

Charles J. DeVriendt

Michael J. Brennan

Ruth W. White

SE/
O: 12/18/13
49

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HAHS, JASON
Employee/Petitioner

Case# **10WC045193**

11WC025184

SOI/BIG MUDDY RIVER CORRECTIONAL CENTER
Employer/Respondent

14IWCC0100

On 10/19/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.15% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
AARON L WRIGHT
601 S UNIVERSITY AVE SUITE 102
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

OCT 19 2012

KIMBERLY B. JANAS Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)SS.

14IWCC0100

COUNTY OF Williamson)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jason Hahs
Employee/Petitioner

v.

State of Illinois/Big Muddy River Correctional Center
Employer/Respondent

Case # **10** WC **45193**

Consolidated cases: **11 WC 25184**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Herrin**, on **8/15/12**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent for date of accident 10/15/10?
D. ☐ What was the date of the accident?
E. ☒ Was timely notice of the accident given to Respondent for date of accident 10/15/10?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other ___

FINDINGS

14IWCC0100

On 10/15/10 & 5/31/11, Respondent *was* operating under and subject to the provisions of the Act.

On these dates, an employee-employer relationship *did* exist between Petitioner and Respondent.

On these dates, Petitioner *did not* sustain accidents that arose out of and in the course of employment.

Timely notice of these accidents *was* given to Respondent.

Petitioner's current condition of ill-being *is NOT* causally related to the accidents.

In the year preceding the injury, Petitioner earned $61,724.00; the average weekly wage was $1,187.00.

On these dates of accident, Petitioner was 38 years of age, *married* with 2 dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $all TTD paid for TTD, $0 for TPD, $0 for maintenance, and $0 for other benefits, for a total credit of $all TTD paid.

Respondent is entitled to a credit of $0 under Section 8(j) of the Act.

ORDER

Petitioner has not met his burden of proof regarding the issues of accident and causation. Accordingly, Petitioner's claims are denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

10/16/12
Date

OCT 19 2012

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Findings of Fact

Petitioner is employed as a Correctional Officer for Respondent at its Big Muddy River Correctional Center where he has worked as a Correctional Officer for 15 years. Petitioner is alleging he sustained two accidents, both of which will be addressed in this decision. Petitioner's first claim alleges a repetitive trauma accident involving both his hands and elbows for an accident date of October 15, 2010. His second claim is for a traumatic incident on May 31, 2011 involving only his left elbow/arm and left hand. Respondent is disputing the first accident based on the issues of: 1) accident, 2) notice, 3) causation, 4) medical expenses and 5) permanency. Respondent is disputing the second accident based on the issues of: 1) causation, 2) medical expenses and 3) permanency.

Petitioner testified that during the course of performing his job duties up to and including October 15, 2010, he began developing symptoms of tingling, numbness, soreness in his hands and arms, and loss of grip strength. He further testified that he first began developing symptoms when he was a Segregation Officer. He described his job duties as a Segregation Officer involved various activities, including turning keys and opening/closing chuckholes on a regular basis. He would also cuff/uncuff inmates, check property boxes and perform shakedowns in this job.

On October 15, 2010, Petitioner saw Dr. Brent Newell of Southern Illinois Healthcare for an EMG on referral from Petitioner's treating physician, Dr. Anad Salem. Dr. Newell's report from that day indicates a history that the Petitioner **"[h]as numbness in both hands at work and while driving. Has had symptoms for about 1 year."** (PX. 3, emphasis added) The impressions from this exam included moderate bilateral medical neuropathy at his wrists and mild left ulnar neuropathy at the elbow.

On October 29, 2010, Dr. Salem's record indicates that Petitioner saw Dr. Salem for complaints of plantar fasciitis as well as a follow up to the EMG with Dr. Newell. Dr. Newell's records note that the Petitioner **"...is going to file a workman's comp claim, because he is working in the control room, and his wrists hurt from operating the control room without rest. He states that he will use an orthopedics [sic] in St. Louis."** (PX. 4, emphasis added)

Petitioner testified that his attorney referred him to see Dr. Brown of the Orthopedic Center of St. Louis. On November 22, 2010, Dr. Brown saw Petitioner and provided the following history: **"His job entails turning keys, opening and closing doors and operating switches.** He explains to me he has a year plus history of pain, numbness and tingling in both his hands and some elbow pain." (PX. 5, emphasis added) Based on this job description, Dr. Brown believed Petitioner's work activities were "in part an aggravating factor in the need for further evaluation and treatment of carpal tunnel syndrome and/or cubital tunnel syndrome." Dr. Brown sends Petitioner to Dr. Daniel Phillips, who conducts nerve conduction studies that are consistent with bilateral carpal tunnel and cubital tunnel syndrome. Dr. Brown then recommended surgery to address these conditions. Petitioner did not undergo surgery at that time. He continued to work regular duty despite the recommendation for surgery.

On May 31, 2011, Petitioner was involved in an altercation with an inmate. Petitioner claims that in that altercation, he landed on his left side. He testified that his left hand went numb and his symptoms were significantly worse. Following this incident, Petitioner went to Herrin Hospital. The records from Herrin Hospital indicate complaints of pain and abrasion to the left elbow and forearm. The June 25, 2011 diagnostic tests from this provider indicate symptoms of left elbow strain. (PX. 7)

On July 6, 2011, Petitioner saw Dr. George Paletta of the Orthopedic Center of St. Louis. Dr. Paletta notes the previous diagnosis of carpal tunnel syndrome and cubital tunnel syndrome. Petitioner provided Dr. Paletta a history of injuring his left elbow while attempting to restrain an inmate. Petitioner claimed that he felt immediate pain and numbness with tingling into his left hand. Dr. Paletta's impression was a traumatic aggravation of Petitioner's ulnar neuritis of the left elbow. Dr. Paletta ordered an EMG, which revealed moderately severe ulnar neuropathy in the left elbow consistent with cubital tunnel and moderate carpal tunnel syndrome in the right wrist according to his July 7, 2011 record. (PX. 8) Dr. Paletta noted that the EMG test results were similar to the previous EMG and nerve conduction studies from November 2010. Dr. Paletta performed left carpal tunnel release and left elbow ulnar nerve transposition surgery on August 30, 2011.

Petitioner testified that he still experiences soreness in his left elbow, that he cannot straighten his left arm and that he has decreased strength. He cannot work on cars or boat motors and takes over the counter medication for his pain.

On cross-examination, Petitioner testified that he has not been in the Seg Unit or Segregation Unit since 2008. After leaving the Seg Unit, he did not have to handle Folger Adams keys, nor did he have to operate chuckholes. He confirmed that the Seg Unit is the only unit that utilizes the Folger Adams keys. The Petitioner testified that he spent eight years total working in Segregation but for five of those years he only worked in Segregation two days a work week. Petitioner also confirmed that he first began noticing numbness in his hands in 2008. His hobbies and sports include weight lifting and motorcycling.

Respondent retained Dr. Anthony Sudekum as a Section 12 IME. Dr. Sudekum authored reports dated March 19, 2011 and October 2, 2011. He also testified via evidence deposition on May 5, 2011 and May 3, 2012. Dr. Sudekum opined that he did not believe Petitioner's carpal tunnel syndrome and cubital tunnel syndrome were caused by his employment activities – either due to the alleged repetitive activity culminating on October 15, 2010 or by the single incident on May 31, 2011. Dr. Sudekum believed that these conditions were pre-existing and that the Petitioner's obesity as well as his outside activities of weight lifting and motorcycling was all contributing factors to these conditions. Dr. Sudekum testified that during the Petitioner's examination, the Petitioner "scoffed sarcastically" that the State of Illinois and the Department of Corrections were "a joke" in response to Dr. Sudekum's explanation of the purpose behind the evaluation. (RX. 4, pg. 22) Dr. Sudekum also noted elements of symptom magnification by the Petitioner during his examination. (RX. 4, pg. 16-18)

Based on the foregoing, the Arbitrator makes the following conclusions:

Regarding the issue of accident, the Arbitrator finds that the Petitioner's testimony lacks credibility in light of the medical evidence. Essentially, Petitioner is claiming a repetitive trauma accident for work that he had stopped doing 2 years before his alleged accident date. The initial facts surrounding the repetitive trauma claim evolve in the medical records in 3 stages. Initially, his complaints are of numbness in both hands while at work and while driving (per Dr. Newell on October 15, 2010). Then, he explains that his wrists are hurting from operating in control room without rest (per Dr. Salem on October 22, 2010). Later, this evolves into his job involving the turning of keys, opening doors, closing doors, operating switches with a history of pain, numbness and tingling in both hands and elbows (per Dr. Brown on November 22, 2010). Petitioner's testimony then goes into great detail on the job duties he performed in the Segregation Unit – which he later admitted was no longer part of his job duties as of 2008. Even putting aside the Petitioner's lack of credibility, the 2 year passage of time - from the last time Petitioner performed his duties in the Segregation Unit to the alleged

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accident/manifestation date of October 15, 1010 – is too great of a factual stretch in this case to prove that Petitioner sustained an accident.

Regarding the Petitioner's claim for an accident stemming from his alleged incident on May 31, 2011, the Arbitrator finds that the Petitioner has failed to meet his burden of proving that his condition of ill-being is causally related to the incident in question. Petitioner testified that this single incident made his symptoms significantly worse. He described how his left hand went numb after the alleged event. However, upon close review of the medical records, the Petitioner's complaints at that time were described as an "elbow sprain." Despite the Petitioner's testimony, the medical records clearly show that the Petitioner's condition both before and after the May 31, 2011 was not significantly different. In fact, Dr. Brown had commented that the Petitioner needed surgery for his condition prior to the May 31, 2011 event. The May 31, 2011 event was a temporary aggravation of the Petitioner's pre-existing condition. As indicated above, the pre-existing condition was not the result of an accident.

In light of these factual issues that cast the Petitioner's credibility into serious doubt, it is not surprising that the Petitioner exhibited symptom magnification at his IME and expressed his belief that both the Respondent and the State of Illinois are a "joke." For all these reasons, the Arbitrator finds that the Petitioner did not meet his burden of proof regarding the issue of accident and causation. Accordingly, all other issues are rendered moot.